

# **INDIANA CIVIL PROTECTIVE ORDER ACT**

**DRAFT  
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Protective Order Committee  
Judicial Conference of Indiana

Indiana Judicial Center  
115 West Washington Street, Suite 1075  
Indianapolis, Indiana 46204  
(317) 232-1313

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## **EXECUTIVE SUMMARY**

The Protective Order Committee of the Indiana Judicial Conference is proposing a major revision of Indiana's statutory scheme involving civil protective orders. Currently, there are some twelve different types of protective, restraining, or no-contact orders available in the State of Indiana. These orders range from no-contact orders in CHINS, delinquency, and criminal proceedings to protective/restraining orders issued in paternity, dissolution, and separation cases. Indiana's civil protective order statute, IC 34-26-2-1 *et seq.*, does not limit the availability of relief to cases involving domestic or family violence, even though adequate remedies exist for disputes between neighbors, co-workers, and others.

The Committee is submitting a revised civil protective order statute that is based upon the Model Code on Domestic and Family Violence. The highlights of the revision include:

- Protective Orders will be limited to situations involving domestic or family violence. No-contact orders will remain available;
- Orders will last for two (2) years, or until otherwise specified by the Court;
- Judges will have sweeping powers to craft orders specific to each family, in order to reduce the recurrence of violence and to protect all family members;
- Elimination of the special process for registering foreign orders. Foreign orders will be registered in the same manner as Indiana protective orders;
- Standard forms for civil protective orders;
- One central statute for all protective orders for domestic or family violence regardless of case type;
- Consistent terminology and definitions throughout the Indiana Code;
- Consistent standards involving family violence for custody and visitation matters;
- Mandatory arrest for violations of protective and no-contact orders (Invasion of Privacy);
- Increased penalties for Invasion of Privacy;
- Modifications of Trial Rule 65(E) in order to reconcile it with the new statutory framework; and,
- Creation of "Workplace Violence Restraining Orders" to address problems associated with workplace violence not involving family or household members.

## **INTRODUCTION**

### **History of Development**

In 2001, the members of the Protective Order Committee of the Judicial Conference of Indiana undertook the task of a major revision of Indiana's statutes concerning civil protective orders. The Committee members sought to accomplish the following objectives: streamlining and consolidating the Indiana Code's many references to "protective orders"; rewriting a single civil protective order act enhancing relief to people affected by domestic or family violence;

writing a statute that would be consistent with recent federal mandates, such as the Violence Against Women Acts I and II; and, using the Model Code on Domestic and Family Violence as the paradigm for this statutory reform. Traditional civil and criminal remedies remain available for nondomestic and nonfamily violence disputes.

### **The Model Code on Domestic and Family Violence**

In May, 1991, the Conrad N. Hilton Foundation awarded the National Council of Juvenile and Family Court Judges a three-year grant to, among other things, draft a Model Code on Domestic and Family Violence. The National Council established an Advisory Committee of twenty-three judges, advocates, attorneys, law enforcement officers, citizens, and other professionals who attended meetings, traveled to urban and rural jurisdictions throughout the United States, studied state laws, met with nationally recognized consultants, and drafted the Model Code. Model Code on Domestic and Family Violence, NCJFCJ (1994). When the Committee directly quotes, attributes, paraphrases, or in any way cites to the Model Code, its Commentary, or its Appendices, the following text will be used: “Model Code on Domestic and Family Violence, NCJFCJ (1994).” The letters “NCJFCJ” are an acronym for the National Council of Juvenile and Family Court Judges.

The Model Code on Domestic and Family Violence was crafted to facilitate parallel statutory development with respect to domestic and family violence among the states. Model Code on Domestic and Family Violence, NCJFCJ (1994).

### **The Violence Against Women Acts of 1994 and 2000**

In 1994, the United States Congress enacted the Violence Against Women Act (“VAWA I”), which the Congress later re-authorized and amended in 2000 (“VAWA II”). In addition to establishing certain federal crimes involving interstate family violence, VAWA I mandated that each State and Indian tribe give full faith and credit to protective orders meeting the requirements of the federal law. 18 U.S.C. § 2265, Pub. L. No.103-322. Congress also forbade States from charging fees for filing protective order cases, service of process in those cases, and the like. VAWA II clarified federal law concerning registration of “foreign” protective orders. 18 U.S.C. § 2265 (d), Pub. L. No. 106-386.

### **Federal Firearms Laws**

Congress also passed a law prohibiting a person who is restrained by a qualifying protective order from possessing a firearm or ammunition while the order is in effect. 18 U.S.C. § 922 (g) (8), Pub. L. No.103-322.

### **The Current State of Indiana Law, 2001**

While the Indiana General Assembly amended Indiana’s civil protective order statute (IC 34-26-1-1 *et seq.*) in response to each federal legislative mandate, Indiana’s judicial officers are concerned with the quality of service the state’s courts are giving to victims of family violence. Indiana’s civil protective order statute, passed originally in 1983 (Pub. L. No. 311-1983,

originally IC 34-4-5.1-1 *et seq.*), did not limit jurisdiction to family violence cases. Instead, the relief was available to all citizens, regardless of relationship. Prior to 1983, an archaic peace bond statute was in place. The Indiana General Assembly used portions of the Uniform Interstate Enforcement of Domestic – Violence Protection Orders Act in 2001 to enact a registry for foreign domestic violence orders. In 1999, a non-scientific study of 300 randomly selected protective order case files in one court in Marion County, Indiana, revealed that roughly half of the cases on that particular court’s docket were *not* domestic in nature.

### **Indiana’s Diverse Protective Orders**

There are over a dozen different types of protective, restraining, or no-contact orders available in the State of Indiana. These orders are: **IC 31-14-16-1**, a protective order issued as part of the establishment of paternity; **IC 31-15-4-3, -7**, temporary restraining orders issued as part of a dissolution or legal separation proceeding; **IC 31-15-5-1**, a protective order issued as part of a dissolution or legal separation proceeding; **IC 31-32-13-1**, a protective/no-contact order (and an emergency protective/no-contact order) issued as part of a delinquency/juvenile proceeding; **IC 31-34-17-1**, a protective/no-contact order issued as part of a C.H.I.N.S. proceeding; **IC 31-34-20-1**, a protective/no-contact order issued as part of a disposition in a C.H.I.N.S. proceeding; **IC 31-37-16-1**, a protective/no-contact order issued as part of a delinquency proceeding; **IC 31-37-19-1, -6**, protective/no-contact orders issued as part of a disposition in a delinquency proceeding; **IC 33-14-1-7**, a no-contact order issued as part of a pre-trial diversion agreement; **IC 34-26-2-1**, civil protective orders (both emergency and permanent); **IC 35-33-8-3.2**, a no-contact order issued as a condition of a defendant’s release on bail; and, **IC 35-38-2-2.3**, a no-contact order issued as a condition of probation. Finally, **Trial Rule 65(E)** also authorizes temporary restraining orders in domestic relations cases.

Under Indiana law, any and all of these orders are supposed to be listed in the statewide registry. Thousands of these orders are issued annually by Indiana courts. The current situation is confusing for victims of family violence, stalking, and sexual assault as well as for attorneys, judges, and law enforcement officers. Of course, every time the General Assembly amends the protective order statute in Title 34, it must locate some eleven other places in the Indiana Code where the new language must also be inserted.

### **Reasons for Standard Protective Orders**

Because so many different statutes exist for protective orders, no standard exists for orders from court to court. The lack of a standard order hinders protection of victims, because enforcers of those orders often do not recognize the validity of those orders, which is contrary to the federal full faith and credit law cited above. Standard procedures and forms of orders should facilitate enforcement. For example, a police officer confronted with an enforcement situation may not be able to ascertain whether the order he or she is being shown by the victim is valid, expired, or even covers the problem at hand. Needless to say, the possibility for malicious manipulation of the current disarray also exists.

## **Misdirected Resources**

The current Indiana statute for civil protective orders under Title 34 is used, and often misused, to address a wide range of wrongs and incivility in our society. Unfortunately, many people use this statute to address problems with neighbors, co-workers, landlords, supervisors, and the like, consuming valuable court resources that could, and should, be concentrated on protecting victims of family violence and their children. Title 34 protective orders are often not very effective in resolving disputes between neighbors or providing actual protection to those parties. In fact, there is currently an excellent mechanism in place to handle non-domestic disputes—Community Dispute Resolution Centers, established by the Indiana General Assembly in the 1990's, IC 34-57-3-1 *et seq.*.

Protective order cases involve circumstances where there exists fear of harm, or further harm, to persons or property. If harm has occurred to persons or property, there are numerous traditional remedies in both civil and criminal law to redress those injuries. There are serious questions with regard to a Court's ability to effectively prevent harm in the non-domestic situations. Under current Title 34 orders, disputes may range from anticipating incivility between neighbors, co-workers, or landlords and tenants, to victims of domestic and family violence needing real security. In domestic and family violence situations, the protective orders issued by Indiana judges are supported by federal gun laws, the Violence Against Women Acts, and federal full faith and credit laws.

There are currently more appropriate remedies available for non-domestic disputes, such as mediation/community dispute resolution centers (IC 34-57-3), injunctions (Trial Rule 65), trespass actions, evictions, criminal charges, etc.

## **Proposed Changes**

The Protective Order Committee proposes a major change in Indiana Protective Order Law: that change consists of replacing the general Title 34 Protective Order statute with one adapted from the Model Code on Family Violence. This would limit civil protective orders to family and domestic violence situations. Other civil protective orders issued in paternity and dissolution actions are consolidated into the new Protective Order statute. Only violations of these protective orders, as well as the no-contact orders currently authorized in juvenile/delinquency, C.H.I.N.S. cases, and criminal cases and qualifying foreign orders, would be enforced as Invasion of Privacy criminal acts. The Committee proposes no changes to the statutes authorizing no-contact orders as conditions of diversion, pretrial release, and probation. Persons would have to seek traditional civil and criminal remedies for non-domestic and non-family violence situations. In non-domestic disputes, courts would issue temporary restraining orders in civil cases and enforce those orders by civil contempt. Courts could also issue no-contact orders as conditions of bond or probation, enforceable by revocation proceedings, in non-domestic cases, or order the parties to participate in community dispute resolution, as described in IC 34-57-3 *et seq.* Law enforcement officers and prosecutors would only have to enforce violations of one type of civil protective order. The Committee also recommends that the Indiana Supreme Court modify Trial Rule 65(E), in order to eliminate the current confusing situation. The

Committee believes it is essential for lawyers and their clients, as well as for courts, to have one central statute for all orders offering protection in domestic and family violence cases.

### **People Who Will Benefit From the Revised Statute**

Victims of family violence, stalking, and sexual assault, and their children and other household members, will derive benefits from the revised statute. Their orders, based on a single statute, will be clear, concise, and uniform. In other words, a victim in Crawford County will receive the same protection, and the same standard order, as would a victim in Allen County. Others who will benefit include: individuals and agencies providing services to victims; attorneys practicing family and criminal law; and, clerks and related personnel. Judges will also benefit from standard forms, as will law enforcement officers and personnel charged with maintaining the registry in Indiana. Additionally, judges will find it easier to handle protective order dockets that consist solely of family violence cases, instead of congested calendars involving neighborhood disputes, conflicts at workplaces and schools, and the like, with the occasional family violence case. The streamlined statute and standard forms will also enable judges and law enforcement officers outside of Indiana to decipher an order's duration, contents, and parties quickly, clearly, and reliably.

#### **34-26-5-1. Construction**

- 1. The Indiana Civil Protective Order Act must be construed to promote:**
  - (a) the protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner; and,**
  - (b) the prevention of future domestic and family violence.**

### **COMMENTARY**

The new Indiana Civil Protective Order Act, like the Model Code, adopts a comprehensive approach to protecting victims of domestic or family violence and preventing future violence. A “broad brush” approach is supported by research and commentary which suggest that the most effective protection orders are those which are comprehensive, and crafted to meet the specific safety and autonomy requirements of the individual petitioner (Gondolf *et al.*, 1994; Chadhuri and Daly, 1991). Model Code on Domestic and Family Violence, NCJFCJ (1994).

#### **34-26-5-2. Eligible petitioners for order; requirements concerning respondents.**

- 1. A person who is or has been a victim of domestic or family violence, as defined in IC 34-6-2-34.5, may file a petition for an order for protection against a family or household member, as defined in IC 34-6-2-44.5, who commits an act of domestic or family violence.**



2. **A parent, guardian, or other representative may file a petition for an order for protection on behalf of a child against a family or household member who commits an act of domestic or family violence.**
3. **A court shall only issue one order for each respondent. If a petitioner files petitions against more than one (1) respondent, the court must assign a new case number to each respondent and maintain a separate court file for each respondent.**
4. **If a petitioner seeks relief against a respondent who is an unemancipated minor, the case may originate in any court of record and, if it is an emergency matter, be processed the same as any other *ex parte* petition. Once a hearing is set, the matter may be transferred to the court with juvenile jurisdiction.**

## **COMMENTARY**

Subsection 1 broadly defines the class of persons eligible to seek protection from the violence inflicted by family or household members in order to enable courts to effectively intervene in domestic or family violence. Comprehensive inclusion of all those exposed to risk within a family or household gives courts the latitude to construct relief to prevent further abuse and to provide essential safeguards (Finn and Colson, 1990). This statute also acknowledges that many members within the family or household and other intimates may be constrained and endangered by a perpetrator of domestic or family violence (Orloff, 1992). A person abused by another to whom she or he is related by blood or marriage may petition. A person victimized by a partner of the same gender or by a person she or he has dated is included within the scope of eligible petitioners. Moreover, the class of eligible petitioners is not limited to those victims currently or formerly residing with the perpetrator. This Subsection also recognizes that the risks posed by perpetrators do not end when victims separate from abusers, and that perpetrators may resort to inflicting more severe violence after a separation or divorce (Mahoney, 1992). Model Code on Domestic and Family Violence, NCJFCJ (1994).

Subsection 2 recognizes that children are acutely vulnerable to the trauma of domestic or family violence, whether they are the biological children of the victim or perpetrator or any other children residing with either party. The Model Code permits petitioning by a child-victim or by a responsible adult—a parent, guardian, or other representative, on behalf of the child-victim. Model Code on Domestic and Family Violence, NCJFCJ (1994). This represents a change from current Indiana law.

Under the current Indiana protective order statute, the petitioner (the party seeking the order) could be either the victim, or a member of the victim's household, or the victim's employer (IC 34-36-2-1, amended 2001). The Model Code slightly narrows the class of eligible adult petitioners. The Committee believes that, unless the petitioner is an incompetent adult, no one except the petitioner should be able to file a case of this type. In other words, the petitioner is the best judge of his or her safety, and also the best judge of whether obtaining a protective order will enhance that safety or jeopardize it. If the Indiana General Assembly adopts the law

proposed in Appendix 7, the “Workplace Violence Restraining Order Act”, that will guarantee that adequate remedies will be available to employers who are concerned about protecting their employees against a violent family member of one of the employees—as well as other potentially violent individuals.

The Model Code contains additional language restricting the forum for protective orders to family/domestic relations courts. The members of the Committee have not adopted this position, because they favor the more accessible approach of allowing the petitioner to file the matter in any court of record. Of course, individual jurisdictions, circuits, and county court systems may wish to assign the cases to a domestic relations or family court, and that is perfectly acceptable.

In Subsection 3, the members of the Committee have specified that each individual respondent is to have an individual case number and court file. This requirement is not in the Model Code. The Committee believes it is necessary to maintain the integrity of the data in the depository, and also because it will avoid confusion, since judges may want to issue orders with different conditions for the individual respondents.

Finally, Subsection 4 is also not in the Model Code. The members of the Committee are aware that a frequent source of confusion in Indiana under the current system involves the problem of juvenile respondents. While restricting the class of eligible parties to “family or household members” will greatly reduce the incidence of such situations, the fact remains that children (unemancipated minors) are still becoming parents themselves, resulting in non-traditional family compositions. The Committee wishes to ensure the safety of petitioners by specifying that emergency matters involving juvenile respondents are to be handled by the same means as those involving adults; however, once a hearing is set, the case may be transferred to juvenile court. In fact, much of the behavior which would fall under the ambit of “domestic or family violence” would probably constitute behavior which the prosecutor could file as a delinquency case.

**34-26-5-3. Uniform statewide forms required for petitions and orders; required statements in petitions and orders; duty of clerk to provide petitions and clerical assistance.**

- 1. The Division of State Court Administration shall:**
  - (a) Develop and adopt uniform statewide forms for petitions and orders for protection, (as well as Confidential Sheets, Notices of Modification or Extension, and Notices of Termination required to maintain an accurate registry of such orders) including but not limited to such orders issued pursuant this statute, including *ex parte* orders, and also no-contact orders available in Titles 31 and 35; and,**
  - (b) Provide the forms to the clerk of each court authorized to issue such orders.**
- 2. In addition to any other required information, the petition for an order for protection must contain a statement listing each civil or criminal action involving both parties and/or the parties’ minor child(ren).**

3. The following statements must be printed in bold-faced type or in capital letters on the order for protection:
  - (a) **“VIOLATION OF THIS ORDER IS PUNISHABLE BY CONFINEMENT IN JAIL, PRISON, AND/OR A FINE.”**
  - (b) **“IF SO ORDERED BY THE COURT, THE RESPONDENT IS FORBIDDEN TO ENTER OR STAY AT THE PETITIONER’S RESIDENCE, EVEN IF INVITED TO DO SO BY THE PETITIONER OR ANY OTHER PERSON. IN NO EVENT IS THE ORDER FOR PROTECTION VOIDED.”**
  - (c) **“PURSUANT TO 18 U.S.C. § 2265, THIS ORDER FOR PROTECTION SHALL BE GIVEN FULL FAITH AND CREDIT IN ANY OTHER STATE OR TRIBAL LAND AND SHALL BE ENFORCED AS IF IT WERE AN ORDER ISSUED IN THAT STATE OR TRIBAL LAND. PURSUANT TO 18 U.S.C. § 922 (g), IT IS A FEDERAL VIOLATION TO PURCHASE, RECEIVE, OR POSSESS A FIREARM WHILE SUBJECT TO THIS ORDER.”**
4. The clerk of the circuit court, or a person or entity designated by the clerk of the circuit court, shall provide to a person requesting an order for protection:
  - (a) The forms adopted pursuant to subsection 1;
  - (b) All other forms required to petition for an order for protection, including but not limited to, forms for service and forms required by the Uniform Child Custody Jurisdiction & Enforcement Act; and
  - (c) Clerical assistance in completing the forms and filing the petition, including:
    - (1) Information about the procedure for obtaining a protective order;
    - (2) Information about when a protective order becomes effective; and,
    - (3) Information about the procedures to follow when a protective order is violated.
  - (d) Clerical assistance provided by the clerk or court personnel pursuant to this Act does not constitute the practice of law.

The clerk of the circuit court may enter into a contract with a person or other entity to provide this assistance.
5. A petition for an order for protection must be verified or under oath pursuant to Rule 11 of the Indiana Rules of Trial Procedure.
6. All orders for protection must be issued on the forms adopted in accordance with subsection 1.
7. Whenever a protective order is issued, the clerk shall comply with IC 5-2-9.

### **COMMENTARY**

Subsection 1 requires that the Division of State Court Administration promulgate uniform statewide forms for all petitions and orders for protection authorized by statute. The agency is, likewise, required to supply the various forms to each court authorized to grant the protective orders. Uniformity in pleadings and orders promotes efficiency and enhances reliability in all phases of protection order proceedings. Forms facilitate filing by persons who are *pro se*. Since

the drafters of the Model Code contemplated that many protection order petitioners would be completing petitions and all relevant forms without the assistance of counsel, and with limited assistance from court clerks or advocates, the availability of simple, yet comprehensive, forms enables petitioners to provide courts with essential information in an efficient, predictable manner (Rural Justice Center, 1991). Model Code on Domestic and Family Violence, NCJFCJ (1994). Forms notify applicants of the scope of relief potentially available and provide guidance for enforcement of any order issued. Judges will be able to review and act upon petitions expeditiously. The use of forms may help ensure that the *pro se* litigant achieves orders comparable to those issued to parties with counsel, and will encourage judges to incorporate consistently the breadth of protection requisite for victim safety. Also, law enforcement personnel are more likely to act to protect victims when the orders they are asked to enforce are issued on forms endorsed by the state and are susceptible to prompt and reliable verification.

Uniform forms are also essential for the efficient and reliable operation of the state registry of protection orders. Further, as both the Model Code and federal law (18 U.S.C. § 2265, Pub. L. No. 103-322) require full faith and credit to be given to facially valid protection orders issued by courts in all states and qualified tribes, judges will be better able to enforce foreign orders and to assess the relevance of those orders in other domestic relations matters brought to a court of the non-issuing state. Orders issued on a form promulgated by the Division of State Court Administration will also facilitate the development of computerized databases on protection order practice, outcomes, and enforcement. Not only will this data collection inform the evaluation of court practices and procedures, but also it will reveal the administrative costs of civil protection order proceedings and furnish statistical data supporting budget initiatives for improved court staffing and practice. Model Code on Domestic and Family Violence, NCJFCJ (1994).

Finally, the committee recommends that an additional staff attorney and support staff be given to the Division of State Court Administration to carry out the requirements of this Act.

Subsection 2 directs that the form petition require the petitioner to provide notice to the court of all of the civil and criminal matters, past and present, involving both parties, or the parties' minor child(ren). With this notice, the court can more readily access court dockets, pleadings, charges, and outcomes, including the issuance of any civil protection or criminal no-contact orders, the contents of which may be relevant to the action taken in the matter currently before the court. The notice will facilitate informed court practice, inhibit the issuance of contradictory court orders, and lessen the chance for manipulation of the system by a party unhappy with a different court's order. Model Code on Domestic and Family Violence, NCJFCJ (1994).

Subsection 3 is designed to provide the person restrained by the order with clear, unequivocal notice of the potential consequences of violation of an *ex parte* or comprehensive protection order. The right of every citizen to due process of law makes it essential that a person against whom an *ex parte* protection order is issued be apprised of the consequences of violation. Beyond this, paragraph (b) of subsection 3 informs the respondent that conduct that might otherwise be permissible is precluded by the protective order. This provision gives notice to the respondent, and indirectly to law enforcement officers, that entry into the residence from which

the respondent is excluded will not be condoned, and the order will be valid and enforceable notwithstanding any invitation by the petitioner. Model Code on Domestic and Family Violence, NCJFCJ (1994). This language is consistent with Indiana's current civil protective order statute, IC 34-26-2-18 (amended 2001).

Subsection 4 enumerates the responsibilities of the clerk of the circuit court to assist petitioners for protective orders. Besides giving petitioners the forms developed by the Division of Court Administration, the clerk of the circuit court must provide all other forms necessary for completion of the application process, such as the Confidential Sheet. The duties concerning the dispensing of information to the petitioner are taken from the language in IC 33-17-1-11, which the Committee is recommending be repealed. The clerk is permitted to enter into contracts with a person (such as a social worker or victim advocate) or entity (such as a victim services agency or other social service agency) to provide this service to petitioners. Contracted persons or entities shall observe the same standards of confidentiality as the Clerk. The Committee recognizes that not all clerks will have the time or human resources to adequately assist petitioners, and so makes provisions for clerks to delegate this responsibility.

Subsection 5 provides that all petitions be verified pursuant to state law (Trial Rule 11). Subsection 6 directs courts to issue orders only on forms developed by the Division of State Court Administration pursuant to subsection 1. The purpose of this section is to underscore the importance of simple, consistent, and comprehensive orders.

#### **34-26-5-4. Jurisdiction; venue; residency not required to petition.**

- 1. Any court of record has jurisdiction to issue civil orders for protection.**
- 2. A petition for an order for protection shall be filed in the county:**
  - (a) where the petitioner currently or temporarily resides;**
  - (b) where the respondent resides; or,**
  - (c) where the domestic or family violence occurred.**
- 3. There is no minimum requirement of residency to petition for an order for protection.**

### **COMMENTARY**

Subsection 1 assigns subject matter jurisdiction in civil protection order matters to any court of record. This does not represent a change from current Indiana law. Indiana's courts should be as accessible as possible to those affected by family violence. Due to the state and federal record-keeping requirements associated with protective orders, as well as the criminal penalties that may result from violations of the orders, the orders must be issued by courts of record.

Subsection 2 provides for personal jurisdiction and venue in any county

where a victim may require the assistance of the court in achieving safety. The members of the Committee, as well as the drafters of the Model Code, recognize the abused person may require the protection of the justice system in locations other than where the acts of abuse occurred. This subsection also establishes venue in the county where the respondent resides. Model Code on Domestic and Family Violence, NCJFCJ (1994).

Subsection 3 specifies that residency is immediately conferred upon a party who is present in a county. Ready access to the courts is necessary for protection of adult and child victims of family violence so long as such access does not encroach unduly on the constitutional rights of respondents. Model Code on Domestic and Family Violence, NCJFCJ (1994).

**34-26-5-5. Continuing duty to inform court of other proceedings; effect of other proceedings; delay of relief prohibited; omission of petitioner's address.**

- 1. At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the court of each proceeding for an order for protection, any civil litigation, each proceeding in a family, domestic relations, or juvenile court, and each criminal case involving the parties or their child(ren), including the case name, the case number, and the county and state of the proceeding, if that information is known by the party.**
- 2. An order for protection is in addition to, and not in lieu of, any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. A court shall not delay granting relief because of the existence of a pending action between the parties. If a petitioner seeks an *ex parte* protective order and the petitioner also has an open case pending involving the respondent and/or their minor child(ren), the court that has been petitioned for relief shall immediately consider the petition, and then transfer that matter to the court in which the case is currently open, in order to coordinate the actions before one judge.**
- 3. A petitioner may omit her or his address from all non-confidential documents filed with the court. However, a petitioner must provide the court with complete information concerning the protected address on the Uniform Statewide Confidential Sheet and other uniform, statewide confidential forms developed by the Division of State Court Administration. The petitioner shall also provide the clerk with a public mailing address for purposes of serving pleadings, notices, and court orders. The petitioner may use the address confidentiality program under Ind. Code 5- 26.5. If disclosure of a petitioner's address is necessary to determine jurisdiction, or to consider venue, the court may order the disclosure to be made:**
  - (a) After receiving the petitioner's consent; or,**
  - (b) Orally and in chambers, out of the presence of the respondent and with a sealed record made; or,**
  - (c) After a hearing, if the court takes into consideration the safety of the petitioner and finds such disclosure is in the interest of justice.**

4. **Any time a petitioner seeks a protective order, or an extension or modification of such an order, or a termination of such an order, the petitioner is responsible for completing the forms prescribed by the Division of State Court Administration and for transmitting those forms to the clerk of the court, so that the depository may be accurately maintained.**

## COMMENTARY

Subsection 1 expands upon the obligation to provide the court with notice of other civil or criminal proceedings involving the parties, or their child(ren), articulated in IC 34-26-5-3. The duty is defined as “continuing”, and is imposed on both the petitioner and the respondent. The duty is operative only during the court proceedings related to the protection order. The scope of other litigation or prosecution about which notice is to be given is large; it encompasses not only legal proceedings between the parties, but all litigation involving either party, or the minor child(ren) of the parties. The drafters of the Model Code concluded that the court is in the best position to evaluate the relevance of this information to the instant protective order case, rather than having the statute articulate a limited list of specific legal actions to be included within the duty to give notice. Model Code on Domestic and Family Violence, NCJFCJ (1994).

Subsection 2 makes it clear that a victim of domestic or family violence is not compelled to elect a single remedy in law or equity, and that the protection order petition may proceed to disposition notwithstanding any proceeding or outcome in any other legal arena. Model Code on Domestic and Family Violence, NCJFCJ (1994).

Also, Subsection 2 preserves the intent of the Supreme Court of Indiana as outlined in State ex rel. Meade v. Marshall Superior Court II, 644 N.E.2d 87 (Ind. 1994)—relief should be available to a petitioner regardless of whether he or she currently has a dissolution pending in another court. The judge who has been petitioned for *ex parte* relief should immediately handle that request, and then transfer the matter to the proper court for consolidation with the existing dissolution case. The safety of the petitioner and his or her children should be paramount, and take precedence over directing the petitioner to the proper venue.

In today’s highly mobile society, courts should adapt and be as accessible as possible to persons in distress. For example, if a petitioner works in Delaware County, at Ball Memorial Hospital, but resides in Madison County, in Anderson, her dissolution case would typically be found in Madison County’s courts. If she is threatened while at work—perhaps followed to work and stalked during her lunch hour while she goes to the bank in Muncie—she should be able to immediately seek assistance from the Delaware County courts in the form of an *ex parte* protective order. The Delaware County judge should consider the request immediately, and then transfer the protective order case to Madison County for coordination with the dissolution case as soon as practical.

Subsection 3 enables the petitioner to omit his or her address from all documents filed with the court that are public records. This language allows the address information to be confidential, if necessary, regardless of whether it involves a shelter for victims of family violence and their children. The petitioner need not seek court approval for non-disclosure of the address information. Model Code on Domestic and Family Violence, NCJFCJ (1994). The petitioner must furnish the court with a protected address on the Confidential Sheet and other confidential forms developed by the Division of State Court Administration. These confidential forms are necessary in order to maintain accurate and current information on the statewide (the Indiana Data and Communications System, or IDACS) and national (the Federal Bureau of Investigation's National Crime and Information Center, or NCIC) registries of protection orders. The petitioner shall also provide the clerk with a public mailing address for purposes of serving pleadings, notices, and court orders. If the court finds that public disclosure of the address is necessary to determine jurisdiction or to consider venue, the court may order disclosure of the protected address under prescribed conditions. The Indiana General Assembly began to address the issue of confidentiality in the 2001 Session, in S.E.A. 518, and the Committee seeks to maintain the spirit, if not the letter, of those provisions.

**34-26-5-6. Order for protection; modification of orders; relief available *ex parte*; relief available after hearing; duties of the court; duration of orders.**

- 1. If it appears from a petition for an order for protection, or a petition to modify an order for protection, that domestic or family violence has occurred, or that a modification of an order for protection is required, a court may:**
  - (a) Without notice or hearing, immediately issue an order for protection *ex parte* or modify an order for protection *ex parte* as it deems necessary to protect the petitioner.**
  - (b) Upon notice, issue an order for protection or modify an order after a hearing whether or not the respondent appears.**
- 2. A court may grant the following relief without notice and hearing in an order for protection or a modification issued *ex parte*:**
  - (a) Enjoin the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household member;**
  - (b) Prohibit the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;**
  - (c) Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;**
  - (d) Order the respondent to stay away from the residence, school, or place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;**
  - (e) Order possession and use of an automobile and other essential**



- personal effects, regardless of the ownership of the essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
- (f) Grant temporary custody of any minor children to the petitioner; and,
  - (g) Order such other relief as it deems necessary to provide for the safety and welfare of the petitioner and any designated family or household member.
3. A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:
- (a) Grant the relief available in accordance with Subsection 2.
  - (b) Specify arrangements for visitation of any minor child by the respondent and require supervision of that visitation by a third party or deny visitation if necessary to protect the safety of the petitioner or child.
  - (c) Order the respondent to pay attorney's fees.
  - (d) Order the respondent to:
    - (1) Pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and minor child, if the respondent is found to have a duty to support the petitioner or minor child;
    - (2) Reimburse the petitioner or other person for any expenses associated with the domestic or family violence, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property; and,
    - (3) Pay the costs and fees incurred by the petitioner in bringing the action.
  - (e) Prohibit the respondent from using or possessing ammunition, a firearm, or other weapon specified by the court, and direct the respondent to surrender to a specified law enforcement agency such ammunition or weapon(s) for the duration of the protective order. The court may subsequently issue a search warrant authorizing a law enforcement officer to seize any deadly weapons, firearms, or ammunition specified in the protective order, if there is probable cause to believe such weapons or ammunition are kept on the premises or curtilage of the respondent and if the court finds that the affiant (in the affidavit for probable cause supporting the request for the search warrant) has reason to believe that all such weapons and ammunition have not been surrendered by the respondent.
4. The court shall:
- (a) Cause the order to be delivered to the county sheriff

- for service;
  - (b) Make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present;
  - (c) Transmit, by the end of the same business day after the order is issued, a copy of the order for protection to any local law enforcement agency or agencies designated by the petitioner;
  - (d) Transmit a copy of the order to the clerk for processing pursuant to the procedures outlined in IC 5-2-9; and,
  - (e) Notify the Indiana State Police of the order if the order and the parties meet the criteria found in 18 U.S.C. § 922(g) (8).
5. An order for protection issued *ex parte* or upon notice and hearing, or a modification of an order for protection issued *ex parte* or upon notice and hearing, is effective for two years from the date of issuance or until a date specifically ordered by the court.
  6. The Sheriff of each county shall provide expedited service for orders for protection.
  7. A finding that domestic or family violence has occurred, sufficient to justify the issuance of an order under this section, shall mean that the respondent represents a credible threat to the safety of the petitioner and/or a member of the petitioner's household. Upon a showing of domestic or family violence by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of the violence or the threat of violence. Such relief may include an order directing the respondent to surrender to a law enforcement officer or agency any and all firearms and ammunition in the control, ownership, or possession of the respondent, or in the control or possession of any person on behalf of the respondent, for the duration of the protective order.
  8. All orders for custody, visitation, or possession or control of property issued under this chapter are superceded by an order issued from a court exercising dissolution, paternity, guardianships, or legal separation jurisdiction over the parties.
  9. The sole fact of the issuance of a protective order under this chapter does not raise an inference or presumption in subsequent cases or hearings between the parties.

## COMMENTARY

Paragraph (a) of Subsection 1 authorizes the *ex parte* issuance and modification of orders for protection. An *ex parte* order can be issued without notice or a hearing only if the court concludes the order is necessary to protect the petitioner. The risks of recidivism and harm are high in the context of domestic and family violence. There is evidence that the safety, if not the lives, of victims would be jeopardized if they were required to give notice and participate in a full hearing before any legal protection is issued. The Model Code thus requires that a petitioner only make a *prima facie* showing that he or she is eligible for protection and that an order is necessary to protect against future violence before issuing or modifying an order for protection

*ex parte*. The Model Code ensures that respondents be accorded due process, notwithstanding the availability of *ex parte* relief. See Subsection 1 of IC 34-26-5-7. Paragraph (b) of Subsection 1 (IC 34-26-5-6(1)(b)) addresses the situation where a respondent elects not to attend a hearing after requisite notice. The Model Code explicitly authorizes *ex parte* issuance of orders as described in IC 34-26-5-7 when a respondent has been given notice, while availing the respondent of ready access to seek modification of an order should the circumstances later warrant it. Model Code on Domestic and Family Violence, NCJFCJ (1994). Indiana's current protective order law, IC 34-26-2-1 *et seq.*, also allows courts to issue *ex parte* protective orders (IC 34-26-2-5). Indiana's statute limits the duration of those orders, and requires courts to set hearings within 30 days (IC 34-26-2-5), although the duration of the orders themselves is 60 days (IC 34-26-2-6).

Subsection 2 lists the relief that may be included in an *ex parte* order. Much of the relief is designed to deny the respondent access to the victim. Judges in individual counties may wish to establish emergency procedures to make *ex parte* protective orders available outside of court hours.

Subsection 3 specifies the relief courts may award after notice and hearing. First, the court may affirm or supplement the relief granted in any temporary order, as well as order any relief granted in accordance with Subsection 2 for a petitioner who has not obtained an *ex parte* order. It also requires a court to deliberate about whether the perpetrator should be accorded visitation based on the risks that the perpetrator may pose to the abused parent or the child. Paragraph (b) gives a court three options: denial of visitation; supervised visitation by a third party who is not the victim; and, unsupervised visitation. When any visitation is awarded, a court is to enumerate the arrangements for visitation, including conditions to protect the child and the petitioner. Paragraphs (c) and (d) afford additional economic assistance to a victim for costs incurred as a result of the violence and monies necessary to achieve economic stability. Model Code on Domestic and Family Violence, NCJFCJ (1994).

Because of the significant use of weapons in both non-lethal and lethal assaults by perpetrators of domestic and family violence, the Model Code contains an option prohibiting the use or possession of ammunition, a firearm, or other weapon. Model Code on Domestic and Family Violence, NCJFCJ (1994). This relief is consistent with both federal law (18 U.S.C. § 922 (g) (8), Pub. L. No. 103-322), which has been in effect since 1994, and Indiana state law, IC 34-26-2-12, which became effective in 1999. In addition to the language in the Model Code, the Committee is proposing additional language in Subsection 3(e). The Committee is suggesting the Indiana General Assembly strengthen Indiana's laws so that the prohibition of firearm possession is meaningful. Passage of this language will enable judges and law enforcement agencies to practically apply the law, and to help ensure the safety of the families involved. Much of this language is derived from New Hampshire Revised Statute Title XII, §§ 173-B:4-5.

Subsection 4 assigns the court several responsibilities necessary for due process and enforcement. Because law enforcement must be able to rely reasonably on the orders furnished to their agencies or the state registry, it is essential that the court employ a reliable system that minimizes exposure of law enforcement to liability. The Model Code directs courts to oversee these functions. Model Code on Domestic and Family Violence, NCJFCJ (1994). The last part of

Subsection 4 paraphrases the language originally found at the very end of IC 34-26-2-12 relating to the confiscation of firearms and notification of the Indiana State Police.

Subsection 5 provides that an order for protection issued pursuant to IC 34-26-5-6 or -7 is in effect for two (2) years or until a court specifies a date. Thus, no time limitations could be imposed. This does not preclude a court from fixing review hearings to evaluate the continuing need for an order, nor does it preclude a request by either the petitioner or perpetrator to terminate the order. Subsection 5 departs from the duration strictures found in some state statutes because the risk posed to victims is not time-certain. The Model Code seeks to protect victims for as long as that protection is required, which should be determined by the court after a hearing; expiration should not occur as a function of the passage of an arbitrary period of time. This provision also limits the unnecessary demand on court dockets required for renewal or extension of orders when protection is required beyond the time of automatic expiration. This provision also shifts the burden from the victim to the perpetrator, who is responsible for seeking court approval to terminate an order that is no longer essential. Model Code on Domestic and Family Violence, NCJFCJ (1994).

Subsection 6 requires the designated authority to provide service in an expedited manner. Model Code on Domestic and Family Violence, NCJFCJ (1994).

#### **34-26-5-7. Required hearings; duty of court when order for protection denied.**

- 1. Except as otherwise provided in Subsection 2, if a court issues an order for protection *ex parte*, or a modification of an order for protection *ex parte*, and the court provides relief pursuant to Subsection 2 of IC 34-26-5-6, upon a request by either party within 30 days after service of the order or modification, the court shall set a date for a hearing on the petition. The hearing must be held within thirty (30) days after the request for a hearing is filed, unless continued by the court for good cause shown. The court shall notify both parties by first class mail of the date and time of the hearing.**
- 2. The court shall set a date for a hearing on the petition within thirty (30) days after the filing of the petition if a court issues an order for protection *ex parte*, or a modification of an order of protection *ex parte*, and:**
  - (a) The petitioner requests, or the court provides, relief in accordance with paragraph (c), (e), (f), or (g) of Subsection 2 of IC 34-26-5-6, concerning eviction of the respondent, distribution of personal property of the parties, and/or custody of (a) minor child(ren); or,**
  - (b) The petitioner requests relief pursuant to paragraph (b), (c), or (d) of Subsection 3 of IC 34-26-5-6.****Such a hearing must be given precedence over all matters except older matters of the same character.**
- 3. In a hearing held pursuant to Subsection 1 or 2 of this section:**
  - (a) Relief in accordance with IC 34-26-5-6 is available.**
  - (b) If the respondent seeks relief concerning an issue not raised by the petitioner, the court may continue the hearing at the petitioner's request.**

## COMMENTARY

Subsection 1 provides the party who did not initiate the *ex parte* petition for relief or modification, with the opportunity to challenge any provision of an order (or modified order). The respondent, whether the victim or perpetrator, must make a timely request for a hearing on matters in dispute related to Subsection 2 of IC 34-26-5-6—otherwise, all issues that might have been contested are waived. The Model Code provides 30 days from service to make the request for hearing. This window of time gives the respondent adequate time to prepare the request for reconsideration and enables the moving party to rely upon the order issued at a date certain. Due process is thus afforded both parties. The court is assigned the responsibility for notice to both parties. Model Code on Domestic and Family Violence, NCJFCJ (1994).

Subsection 2 requires that when a court granting the *ex parte* order or modification awards custody of the minor children to the petitioner, when either party desires that the respondent have visitation with the children, or when the petitioner seeks economic relief, the court must schedule a hearing within a time certain of the filing of the petition for protection or modification. The hearing is to be given precedence on the docket over all other matters, except order for protection proceedings previously scheduled. Model Code on Domestic and Family Violence, NCJFCJ (1994).

Subsection 3 reaffirms that the relief enumerated in IC 34-26-5-6 may be granted at the hearing, even if neither the petitioner nor the respondent has made application for the specific relief orally or in documents filed with the court. This provision enables the court to issue supplemental relief pursuant to IC 34-26-5-6 as it deems the relief is necessary to provide for the safety and welfare of the petitioner and family or household members. It permits the petitioner to request relief without the formality of amending the pleadings. It eliminates the requirement for responsive pleading, requiring only that the respondent request a hearing, and allowing the respondent to identify any issues in dispute or relief sought at the hearing itself. If the respondent raises issues or asks for relief not addressed or sought by the petitioner, the court may grant a continuance, should the petitioner ask for time to prepare to respond to the matters raised by the respondent. Model Code on Domestic and Family Violence, NCJFCJ (1994).

### **34-26-5-8. Effect of action by petitioner or respondent on order.**

**If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection.**

## COMMENTARY

This section firmly underscores the principle that court orders may be modified only by judges and rejects the notion that any party, by his or her conduct, can set aside or modify the terms and conditions of any order for protection, even by agreement of the parties. The remedy for the victim or perpetrator seeking to be excused from any provision of an order of protection

is to petition for modification pursuant to IC 34-26-5-6. Likewise, this section gives unequivocal direction to law enforcement officers that orders for protection are to be enforced as written and that no action by a party relieves the duty to enforce the order. Model Code on Domestic and Family Violence, NCJFCJ (1994). This is entirely consistent with language added to the civil protective order statute by the General Assembly in 2001; IC 34-26-2-18 reads, “[i]f a respondent is ordered to stay away from a petitioner, an invitation by a petitioner to a petitioner’s residence or other place where a petitioner is located, does not waive or nullify any relief provided by the court in the order of protection.”

### **34-26-5-9. Dismissal by petitioner.**

**If a petitioner files a written request for dismissal with the court, or makes an oral request to dismiss the case in open court, and on the record, the court shall, without delay or any conditions, dismiss the case without prejudice.**

#### **COMMENTARY**

While the Model Code does not address this situation, the members of the Committee believe that language of this type is necessary to enhance the victim’s safety and autonomy. Even though a judge may not believe that dismissal of the order for protection is the best way to ensure a victim’s safety, the fact is that the victim alone is, ultimately, the best judge of his or her own safety (Weisz, Tolman, and Saunders, 2000).

### **34-26-5-10. Denial of relief prohibited.**

**The court shall not deny a petitioner relief requested pursuant to IC 34-26-5-6 only because of a lapse of time between an act of domestic or family violence and the filing of the petition.**

#### **COMMENTARY**

This section recognizes that a perpetrator of domestic or family violence may pose a risk of violence long after the last act or episode of violence, and that an order may be necessary to protect a victim from that continuing or recurrent risk. Model Code on Domestic and Family Violence, NCJFCJ (1994). As an example, the intimate partner was incarcerated for a period of years for setting the petitioner’s home on fire, and the petitioner is requesting protection.

### **34-26-5-11. Mutual orders for protection prohibited.**

- 1. A court shall not grant a mutual order for protection to opposing parties.**
- 2. If both parties allege injury, the parties shall do so by separate petitions. The trial court shall review each petition separately, in individual or consolidated hearings, and grant or deny each petition on its individual merits. If the trial court finds cause to grant both motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.**

## COMMENTARY

The Model Code explicitly prohibits the issuance of mutual protection orders. Mutual orders create due process problems as they are issued without prior notice, written application, or finding of good cause. Mutual orders are difficult for law enforcement officers to enforce, and ineffective in preventing further abuse. Model Code on Domestic and Family Violence, NCJFCJ (1994).

Mutual orders undermine the safeguards contemplated by civil protection order statutes (Orloff, 1992). Mutual orders minimize a perpetrator's exposure to sanctions for violation of an order. Mutual orders rarely provide comprehensive relief to safeguard the victim. The diluted and mixed messages of mutual orders result in unpredictable police response. Often, police refuse to enforce mutual orders (Finn and Colson, 1990). When a mutual order is violated, law enforcement officers have no way to determine who needs to be arrested and may arrest both parties, further victimizing the real victim (Herrell and Hofford, 1990). The consequences of arrest for victims who have committed no violence or criminal act, but who are bound by a mutual order, are profound; victims may suffer a loss of good reputation, lose custody of children, find employment endangered, require burdensome fees for defense counsel, and be unable to make bail. Model Code on Domestic and Family Violence, NCJFCJ (1994).

The Model Code does not preclude the issuance of separate orders for protection restraining each opposing party where:

- each party has properly filed and served petitions for protection orders; and,
- each party has committed domestic or family violence as defined by the Model Code; and,
- each poses a continuing risk of violence to the other; and,
- each has otherwise satisfied all prerequisites for the type of order and remedies sought; and,
- each has complied with the provisions of this chapter.

A court must make explicit findings of fact regarding the violent conduct of each party—whether the conduct of either was in defense of self or others—and the continuing risk posed by each toward the other. Where separate orders for protection are awarded, the relief contained in each should be tailored individually to address the risk and to prevent the recurrence of the abusive conduct of the other, and each order should be constructed in a manner so as not to jeopardize the safety requirements of the other party. Model Code on Domestic and Family Violence, NCJFCJ (1994).

This provision of the Model Code is in harmony with Indiana law in 2001. For example, Rule 65(E)(2) of the Indiana Rules of Trial Procedure states in part, "...[a] joint or mutual restraining or protective order shall not be issued. If both parties allege injury, they shall do so by separate petitions. The trial court shall review each petition separately and grant or deny each petition on its individual merits. In the event the trial court finds cause to grant both petitions, it shall do so by separate orders." And, IC 34-26-2-10 states in relevant part that, "(a)...[a] court may not issue a joint or mutual protective order, an emergency protective order, or a restraining

order...(b) If both parties allege injury, the parties shall do so by separate motions. The trial court shall review each motion separately, and grant or deny each motion on its individual merits. If the trial court finds cause to grant both motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.”

In addition to not representing a departure from current Indiana law, this section also comports with the mandate of federal law. Mutual orders of protection are not entitled to full faith and credit unless they meet certain criteria. 18 U.S.C. § 2265 (c).

### **34-26-5-12. Court-ordered and court-referred mediation.**

**A court shall not order parties into mediation or refer them to mediation for resolution of the issues in a petition for an order for protection regarding family or domestic violence. This does not preclude mediation in other cases involving the same parties.**

#### **COMMENTARY**

This section prohibits a court from ordering or referring parties to mediation in a proceeding for an order for protection. Mediation is a process by which parties reach consensual agreement about the issue at hand. Violence, however, is not a subject for compromise. Model Code on Domestic and Family Violence, NCJFCJ (1994).

### **34-26-5-13. Court costs and fees.**

**Fees for filing, service of process, witness and/or subpoena fees, must not be charged for any proceeding seeking only the relief, or the enforcement thereof, provided in this chapter. This section does not prevent the collecting of costs from a party against whom a protective order is sought, provided the court actually finds the claim to be meritorious and does issue an order for protection under this chapter.**

#### **COMMENTARY**

This section underscores and enhances the public policy position incorporated in many state codes; victims of domestic or family violence must have ready access to the courts and access must not be constrained by the economic means of petitioners (Rural Justice Center, 1991; Finn and Colson, 1990). The drafters of the Model Code rejected several methods of fee deferral or waiver and concluded that the assessment of indigence by the court, or an affidavit of inability to pay fees and costs (required by some codes) unduly burdens victims and court personnel. The drafters also rejected the practice of evaluating the perpetrator’s income in determining a petitioner’s eligibility for fee waiver. Concern that the elimination of fees and the assumption of costs by the state would invite inappropriate applications by ineligible petitioners



is not supported by the experience of courts in states with no economic barriers to orders for protection. Model Code on Domestic and Family Violence, NCJFCJ (1994).

Of course, Congress has also mandated that states not charge fees in protective order cases, in order to remain eligible for federal monies, the impetus for the General Assembly's enactment of IC 33-19-4.5, which the Committee is recommending be repealed. The Committee has retained language from that chapter concerning collection of fees and court costs from the respondent which meets the federal mandate.

**34-26-5-14. Full faith and credit; enforcement of foreign orders; duties of court and law enforcement personnel; facial validity.**

- 1. Full faith and credit.**
  - (a) Any protection order that is facially valid and is issued by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the courts of Indiana.**
  - (b) In the case of mutual foreign protection orders, a protection order issued by a State or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against a family or household member is not entitled to full faith and credit unless—**
    - (1) a separate petition or motion has been filed;**
    - (2) the issuing court has reviewed each motion separately and granted or denied each on its individual merits; and,**
    - (3) separate orders were issued and the issuing court made specific findings that each party was entitled to such an order.**
- 2. Registration. Registration or filing a foreign protection order is not a prerequisite to enforcement of that order in Indiana. No registration or filing of foreign protection orders is required for the enforcement of those orders. Any protection order that is otherwise consistent with this Section shall be accorded full faith and credit, notwithstanding a failure to register or file the order in Indiana. However, if a petitioner wishes to register a foreign protection order in Indiana, all Indiana courts of record shall accommodate that request. The Division of State Court Administration shall develop a form to be used by courts, clerks, and law enforcement when a petitioner makes such a request. The courts, clerks of the courts, and sheriffs or law enforcement agencies maintaining depositories under IC 5-2-9-6 shall employ the same procedures for entering, modifying, extending, or terminating foreign protective orders as they follow for protective and no contact orders originating in Indiana, and as required by IC 5-2-9-6.**
- 3. Enforcement. A facially valid foreign protection order shall be enforced by the law enforcement officers and courts of Indiana as if it were an order originating in this state. If the foreign protection order contains relief that the courts of Indiana would lack the power to provide, the order must still be enforced.**
- 4. Duties of law enforcement personnel.**

- (a) **Indiana’s law enforcement officers shall not require notification, registration, or filing of facially valid foreign orders for protection as a prerequisite to enforcement of such orders.**
- (b) **If a foreign protection order is not presented, a law enforcement officer may consider other information in determining, under the totality of the circumstances, whether there is probable cause to believe that a valid foreign order for protection exists.**
- (c) **If a law enforcement officer determines an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order and serve the order upon the respondent and ensure that the fact of service, as well as the order, is entered into the state depository, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order. The officer shall ensure the safety of the protected person(s) while giving the respondent the opportunity to comply with the order.**

**5. Facial validity.**

**(a) A foreign protection order is facially valid if it:**

- (1) identifies the protected individual(s) and the respondent;**
- (2) is currently in effect;**
- (3) was issued by a State or tribal court with jurisdiction over the parties and the subject matter under the law of the issuing State or Indian tribe; and**
- (4) was issued after the respondent was given reasonable notice and an opportunity to be heard sufficient to protect that person’s right to due process. In the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by State or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent’s due process rights.**

**(b) A foreign protection order valid on its face is *prima facie* evidence of its validity. The protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protective order is not required for enforcement.**

## **COMMENTARY**

The Model Code contained a provision requiring registration (and enforcement) of foreign protection orders. However, given the recent changes in federal full faith and credit law, the Model Code language is no longer the best choice for a full faith and credit statute. So, the Committee has drafted a hybrid statute incorporating language from the federal full faith and credit law, from the National Conference of Commissioners on Uniform State Laws’ “Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act”, and Indiana’s civil protective order statute (IC 34-26-2-10), as well as original language.

Given the high degree of mobility in our society, it is very likely that individuals who are subject to protective orders will cross state lines. In some areas of Indiana—especially those near

state lines or major highways—people routinely cross state lines on a daily basis to go to work, attend classes, visit friends and family, and recreate. Subsection 1 contains language derived from the federal full faith and credit statute (18 U.S.C. § 2265 (a) and (c)) regarding full faith and credit generally, and mutual foreign protection orders respectively, and from IC 34-26-2-10 regarding mutual protective orders.

Subsections 1 and 2 contain language derived from 18 U.S.C. § 2265 (d) (1) and (2). This portion of the statute was enacted on October 28, 2000, as a part of Public Law No. 106-386, which contained VAWA II. Some confusion had arisen among States and Indian tribes concerning whether VAWA I's full faith and credit provision required notification to the respondent, or registration of foreign orders. States began instituting varied, and contradictory, procedures. In July of 2000, the National Conference of Commissioners on Uniform State Laws approved a "Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act" which, although it did not require registration and notification, set out language and a procedure through which a state, if it so chose, could facilitate registration of foreign protective orders. Indiana's General Assembly followed suit in 2001, when it enacted Senate Enrolled Act 518, Pub. L. No. 280-2001, containing a new chapter, IC 34-26-2.5, "Enforcement of Foreign Protection Orders." The Committee believes simplifying the registration process will eliminate the need for a foreign protective order registry. This language also minimizes the burden on petitioners and law enforcement. Should a protected person wish to register an order in Indiana, Section 2 contains language requiring courts, clerks, and sheriffs or law enforcement agencies maintaining depositories to follow the same procedure outlined in IC 5-2-9-6, thus eliminating the need for IC 5-2-9-6.3.

Subsection 3 derives its language from 18 U.S.C. § 2265 (a) and from the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act, Prefatory Note, Section II., The Requirements of Interstate Enforcement: "[t]he Act makes it clear that all the terms of the orders of the issuing States must be enforced, including terms that provide relief that the courts of the enforcing State would lack power to provide." Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act, Prefatory Note, U.L.A. (2001 Electronic Pocket Part Update) (West Group).

Subsection 4 (a) outlines the duties of a law enforcement officer when presented with a foreign protection order. Its language is consistent with that found elsewhere in this Act. Subsections 4 (b) and (c) contain language derived from Section 4 of the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act, which is entitled, "Nonjudicial Enforcement of Order", and which outlines the various ways law enforcement officers may respond to a full faith and credit enforcement problem. The Comment to that section reads in part as follows:

[t]he enforcement procedures...rely on the sound exercise of the judgment of law enforcement officers to determine whether there exists probable cause to believe that a foreign protection order exists and has been violated. These procedures anticipate that there will be many instances in which the protected individual does not have, or cannot, under the circumstances, produce a paper copy of the foreign protection order...If the protected individual presents, whether by providing a paper copy (which need not be certified) of a protection order or

through an electronic medium, such as access to a state registry of orders, proof of a facially valid order, the order should be enforced. In determining whether there is proof of a facially valid order, a law enforcement officer, where possible, may, and, indeed, should, search, using an electronic or other medium, a state or federal registry of orders.

Subsection (b) concerns the circumstance in which the protected individual cannot present direct proof of the protection order. In this situation, law enforcement officers are expected to obtain information from all available sources, including interviewing the parties and contacting other law enforcement agencies, to determine whether there is a valid protection order in effect. If the officer finds, after considering the totality of the circumstances, that there is probable cause to believe that a foreign protection order exists and has been violated, he or she should enforce the order. This probable cause determination must meet the constitutional standards for determining probable cause. If it is later determined that no such order was in place or the order was unenforceable, law enforcement agencies, officers, or other state officials will be protected by the immunity provision...for actions taken in good faith.

Subsection (c) provides that if a law enforcement officer discovers in the course of a probable cause investigation that the respondent has not been notified of the issuance of or served with an otherwise valid foreign protection order, the officer must then inform the respondent of the terms and conditions of the protection order and make a reasonable effort to serve the order upon the respondent. The respondent must be allowed a reasonable opportunity to comply with the order before the order is enforced. Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act, Comment to Section 4, U.L.A. (2001 Electronic Pocket Part Update) (West Group).

The Committee's version of this language adds the final clause to Subsection 4 (c) concerning the safety of the protected person(s). While the members of the Committee agree with the authors of the Uniform Act, the Committee members are concerned that officers may consider their jobs finished once they serve a foreign order on a respondent and then depart from the scene, leaving an extremely volatile situation unsupervised. The members of the Committee believe it is incumbent upon officers to actually enforce the orders and ensure that the protected person(s) will be safe while, for example, a respondent gathers his or her belongings and leaves the residence pursuant to the terms of the order.

Subsection 5 defines a facially valid foreign protective order—one that is enforceable through full faith and credit. The language is an amalgam of the definition found in 18 U.S.C. § 2265 (b) and the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act, § 3, “Judicial Enforcement of Order,” and § 4, “Nonjudicial Enforcement of Order.”

The provisions of this Section do not relieve any party from the requirements of the Uniform Interstate Family Support Act (UIFSA) and the Uniform Child Custody Jurisdiction and

Enforcement Act (UCCJEA) for registration and other matters regarding support and custody. Model Code on Domestic and Family Violence, NCJFCJ (1994).

### **34-26-5-15. Orders required to be entered into IDACS.**

**The following orders are required to be entered into IDACS by each county sheriff's and/or local law enforcement agency's depository pursuant to IC 5-2-9-5:**

- (1) No-Contact Orders issued under IC 31-32-13 in juvenile cases;**
- (2) No-Contact Orders issued under IC 31-34-17 in C.H.I.N.S. cases;**
- (3) No-Contact Orders issued under IC 31-34-20 in C.H.I.N.S. cases;**
- (4) No-Contact Orders issued under IC 31-37-16 in delinquency cases;**
- (5) No-Contact Orders issued under IC 31-37-19 in delinquency cases;**
- (6) No-Contact Orders issued under IC 33-14-1-7 in criminal cases;**
- (7) Protective Orders issued under IC 34-26-5;**
- (8) Workplace Violence Restraining Orders issued under IC 34-26-6;**
- (9) No-Contact Orders issued under IC 35-33-8-3.2 in criminal cases; and,**
- (10) No-Contact Orders issued under IC 35-38-2-2.3 in criminal cases.**

### **COMMENTARY**

The Committee is omitting the original wording of this Section of the Model Code, which establishes a statewide registry for orders for protection, because there already exists a state registry for protective orders in Indiana. The system is described in IC 5-2-9 and IC 5-2-5. Basically, the law currently requires the sheriff or other local law enforcement agency in each county to enter all information about protective orders into the IDACS computer. The reader is directed to the suggested amendments and accompanying Commentary to Title 5 of the Indiana Code.

Instead of using the original Model Code text, which first establishes and then clarifies the accessibility of the statewide registry, the Committee is using this last Section to list all of the orders which, under the revisions herein, will be entered into IDACS pursuant to state law.

### **34-26-5-16. Guardian ad litem.**

**In all proceedings under this chapter, the court may appoint a guardian ad litem to represent the interests of the children of either or both parents.**

### **COMMENTARY**

This section is derived from a New Hampshire statute, N.H. Rev. Stat. Title XII, §173-B:6. When minors are involved and their interests are not being adequately represented by their parents, the court may appoint guardians *ad litem* for the minor. Indiana law is silent on the appointment of guardians *ad litem* in protective order cases. The Model Code does not contain comparable language in its chapter on protective orders.

**34-26-5-17. Return of confiscated weapons and ammunition; limitation on liability.**

**(a) Within thirty (30) days prior to the expiration of the protective order, the respondent may request, by written motion to the court, the return of any and all specified firearms, ammunition, or deadly weapon(s) held by a law enforcement agency while the protective order was in effect. Upon receipt of such a motion, the court shall schedule a hearing no later than thirty (30) days after the expiration of the order. The court shall provide written notice to the petitioner, who shall have the right to appear and be heard, and to the law enforcement agency which has control over the property in question. The scope of the hearing shall be limited to determining if the respondent is subject to any state or federal law or court order that precludes the respondent from owning or possessing a firearm, ammunition, or deadly weapon. The court may require a record check. The burden of proof by clear and convincing evidence shall rest on the respondent.**

**(b) If the court finds that the respondent is not subject to any state or federal law or court order precluding the ownership or possession of firearms, ammunition, or deadly weapons, or if the court denies the petitioner's request to extend the protective order, the court shall issue a written order directing the law enforcement agency to return the requested property to the respondent.**

**(c) Law enforcement agencies shall not release firearms, ammunition, and specified deadly weapons without a court order granting such release. The law enforcement agency may charge the respondent a reasonable fee for the storage of any property taken or surrendered pursuant to a protective order. The fee shall not exceed the actual cost incurred by the law enforcement agency for the storage of the property.**

**(d) No law enforcement agency shall be held liable for alleged damage or deterioration due to storage or transportation to any firearm, ammunition, or deadly weapon held by a law enforcement agency, so long as due care is used.**

**(e) Failure to file a timely request prior to expiration of the protective order for the return of surrendered property will result in forfeiture.**

**COMMENTARY**

This language is derived from New Hampshire Revised Statute Title XII, §173-B:5. It is important to establish a process for respondents who seek to have their weapons and ammunition returned which is standard for all courts, and specifies the procedures to be followed by both courts and law enforcement agencies. This language is not in the Model Code.

## **APPENDICES**

### **APPENDIX 1**

#### **NECESSARY AMENDMENTS TO TITLE 5 OF THE INDIANA CODE**

##### **IC 5-2-5-1 (AMENDED).**

The following definitions apply throughout this chapter:

- (1) “Limited criminal history” means information with respect to any arrest, indictment, information, or other formal criminal charge, which must include a disposition. However, information about any arrest, indictment, information, or other formal criminal charge which occurred less than one (1) year before the date of a request shall be considered a limited criminal history even if no disposition has been entered.
- (2) “Bias crime” means an offense in which the person who committed the offense knowingly or intentionally:
  - (A) selected the person who was injured; or
  - (B) damaged or otherwise affected property;by the offense because of the color, creed, disability, national origin, race, religion, or sexual orientation of the injured person or of the owner or occupant of the affected property, or because the injured person or owner or occupant of the affected property was associated with any other recognizable group or affiliation.
- (3) “Council” means the security and privacy council created under section 11 of this chapter.
- (4) “Criminal history data” means information collected by criminal justice agencies, the United States Department of Justice for the department’s information system, or individuals. The term consists of the following:
  - (A) Identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges.
  - (B) Information regarding an offender (as defined in IC 5-2-12-4) obtained through sex offender registration under IC 5-2-12.
  - (C) Any disposition, including sentencing, and correctional system intake, transfer, and release.
- (5) “Criminal justice agency” means any agency or department of any level of government whose principal function is the apprehension, prosecution, adjudication, incarceration, probation, rehabilitation, or representation of criminal offenders, the location of parents with child support obligations under 42 U.S.C. 653, the licensing and regulating of riverboat gambling operations, or the licensing and regulating of pari-mutuel horse racing operations. The term includes the Medicaid fraud control unit for the purpose of investigating offenses involving Medicaid. The term includes a nongovernmental entity that performs as its principal function the:
  - (A) apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders;
  - (B) location of parents with child support obligations under 42 U.S.C. 653;
  - (C) licensing and regulating of riverboat gambling operations;
  - (D) licensing and regulating of pari-mutuel horse racing operations;

- under a contract with an agency or department of any level of government.
- (6) “Department” means the state police department.
- (7) “Disposition” means information disclosing that criminal proceedings have been concluded or indefinitely postponed.
- ~~(8) “Foreign protection order” has the meaning set forth in IC 34-6-2-48.5.~~
- ~~(9) “Indiana order” has the meaning set forth in IC 5-2-9-2.1.~~
- (8) ~~(10)~~ “Inspection” means visual perusal and includes the right to make memoranda abstracts of the information.
- (9) ~~(11)~~ “Institute” means the Indiana criminal justice institute established under IC 5-2-6.
- (10) ~~(12)~~ “Law enforcement agency” means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders.
- (11) **“No-contact order” means an order issued under one of the following sections of the Indiana Code, that orders a person to have no direct or indirect contact with another person:**
- (A) IC 31-32-13;
  - (B) IC 31-34-17;
  - (C) IC 31-34-20;
  - (D) IC 31-37-16
  - (E) IC 31-37-19-1;
  - (F) IC 31-37-19-6;
  - (G) IC 33-14-1-7;
  - (H) IC 35-33-8.3.2; and,
  - (I) IC 35-38-2-2.3.
- (12) **“Protective order” has the meaning set forth in IC 5-2-9-2.1, and includes foreign protection orders as defined in IC 34-6-2-48.5.**
- (13) “Release” means the furnishing of a copy, or an edited copy, of criminal history data.
- (14) “Reportable offenses” means all felonies and those Class A misdemeanors which the superintendent may designate;
- (15) “Request” means the asking for release or inspection of a limited criminal history by noncriminal justice organizations or individuals in a manner which:
- (A) reasonably ensures the identification of the subject of the inquiry; and
  - (B) contains a statement of the purpose for which the information is requested.
- (16) “Unidentified person” means a deceased or mentally incapacitated person whose identity is unknown.
- (17) **“Workplace Violence Restraining Order” means an order issued pursuant to IC 34-26-6.**

## COMMENTARY

The Committee recommends the above amendments because the members believe that the process for registration of foreign protective orders enacted in the 2001 session of the General Assembly (Senate Enrolled Act 518) creates a layer of bureaucracy for all involved—victims, court staff, clerks, and law enforcement. Under the proposal, if a protected person wishes to register a foreign protection order, then the Committee has defined “protective order”



to include foreign protection orders, the authorities will enter the foreign order into the depository in the same manner as an order originating in Indiana. The Committee has added the definition of “no-contact order” to clarify the difference between a protective order and a “no-contact order” issued in a delinquency, C.H.I.N.S., or criminal proceeding—matters that might, or might not, involve domestic or family violence.

#### **IC 5-2-5-12 (AMENDED).**

(a) On a daily basis, all law enforcement agencies shall enter into the Indiana data and communication system (IDACS) computer the following:

- (1) All information concerning stolen or recovered property, including:
  - (A) motor vehicles;
  - (B) firearms;
  - (C) securities;
  - (D) boats;
  - (E) license plates; and
  - (F) other stolen or recovered property.
- (2) All information concerning fugitives charged with a crime, including information concerning extradition.
- (3) All information concerning runaways, missing and unidentified persons, and missing children (as defined IC 10-1-7-2), including information concerning the release of such persons to the custody of a parent or guardian.
- (4) Information contained in ~~an Indiana~~ **a protective order, a no-contact order, or a workplace violence restraining order**, including any modifications or extensions issued by a court and filed with a law enforcement agency as required in IC 5-2-9-6(f).
- ~~(5) Information contained in a foreign protection order, including any modifications and extensions issued by a tribunal and filed with a law enforcement agency as required in IC 5-2-9-6.3.~~

(b) On a daily basis, all law enforcement agencies shall:

- (1) enter all information concerning missing children (as defined in IC 10-1-7-2) into the National Crime Information Center’s Missing Persons File;
- (2) enter into the National Crime Information Center’s Wanted Person File all information concerning warrants issued for a person who allegedly abducted or unlawfully retained a missing child; and
- (3) enter all information concerning unidentified persons into the National Crime Information Center’s Unidentified Persons File ; **and,**
- (4) enter all information concerning protective orders, workplace violence restraining orders, and no-contact orders involving intimate partners into the National Crime Information Center’s Protection Order File, provided the order qualifies under NCIC rules.**

(c) If ~~an Indiana~~ **a protective order or a no-contact order or a workplace violence restraining order or a foreign order** is removed from a depository established under IC 5-2-9, the law enforcement agency responsible for the depository shall delete the information entered under subsection (a) (4) ~~or (a) (5)~~ from the Indiana data and communication system (IDACS).

## COMMENTARY

The Committee is recommending the above amendments to, once again, simplify the law with respect to protective orders—whether they are issued by an Indiana court or another tribunal. Also, the Committee has added the “no-contact order” language to once again clearly delineate the different types of orders courts may issue under Indiana law. The Committee has added Subsection (b)(4) in order to comply with the requirements of the NCIC (the National Crime Information Center) and NICS (the National Instant Background Check System). In today’s highly mobile society, it is imperative that all law enforcement officers (and NICS) have accurate information at their fingertips. For example, if a respondent becomes subject to a protective order in Johnson County on a Monday, and tries to buy a firearm or ammunition in Marion County on the following Tuesday, and lies about being subject to a protective order, NICS must have the data about the Brady disqualifier, or else tragic consequences could ensue. Likewise, if that same respondent follows the protected person to Kings Island the following weekend, the Ohio authorities will not be able to arrest the respondent (who may have committed a federal crime by crossing state lines to violate the order) or otherwise protect the petitioner unless the order is entered into NCIC.

### IC 5-2-9-1.5 (REPEALED).

~~As used in this chapter, “foreign protection order” has the meaning set forth in IC 34-6-2-48.5.~~

### IC 5-2-9-1.6 (REPEALED).

~~As used in this chapter, “tribunal” has the meaning set forth in IC 34-6-2-144.2.~~

### IC 5-2-9-2.1 (AMENDED).

- (a) As used in this chapter, “**Indiana protective order**” means:
- (1) a protective order issued under:
    - (A) **IC 34-26-5 (or IC 34-26-2-12(1)(A), (B), or (C) (or IC 34-4-5.1-5(a)(1)(A), (B), or (C) before its repeal, if the order involved a family or household member);**
    - ~~(B) IC 34-26-2-12(1)(B) (or IC 34-4-5.1-5(a)(1)(B) before its repeal; or~~
    - ~~(C) IC 34-26-2-12(1)(C) (or IC 34-4-5.1-5(a)(1)(C) before its repeal);~~  
that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;
  - (2) an emergency *ex parte* protective order issued under **IC 34-26-5 (or an emergency protective order issued under IC 34-26-2-6(1), (2), or (3) , IC 34-26-2-6(2), or IC 34-26-2-6(3) (or IC 34-4-5.1-2.3(a)(1)(A), (B), or (C) , IC 34-4-5.1-2.3(a)(1)(B), or IC 34-4-5.1-2.3(a)(1)(C) before their repeal, if the order involved a family or household member) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;**

- (3) a ~~temporary restraining order~~/**protective order** issued under IC 31-15-4-3/**IC 34-26-5 (2)** or **IC 31-15-4-3(3)** (or IC 31-16-4-2(a)(2), IC 31-16-4-2(a)(3), IC 31-11.5-7(b)(2), or IC 31-11.5-7(b)(3) before their repeal) ~~that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;~~
  - (4) a dispositional decree **containing a no-contact order** issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-19-5 **6** (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order **containing a no-contact order** issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) ~~that orders a person to refrain from any direct or indirect contact with a child in need of services or a delinquent child;~~
  - (5) ~~an~~ **no-contact** order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, ~~that orders a person to refrain from any direct or indirect contact with another person;~~
  - (6) ~~an~~ **no-contact** order issued as a condition of probation ~~that orders a person to refrain from any direct or indirect contact with another person;~~
  - (7) a protective order issued under IC 31-15-5/**IC 34-26-5** (or IC 31-11.5-8.2 or IC 31-16-5 before their repeal) ~~that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;~~
  - (8) a protective order issued under IC 31-14-16/**IC 34-26-5** in a paternity action ~~that orders the respondent to refrain from having direct or indirect contact with another person;~~
  - (9) a ~~protective~~ **no-contact** order issued under IC 31-34-17 in a child in need of services proceeding or under IC 31-37-16 in a juvenile delinquency proceeding ~~that orders the respondent to refrain from having direct or indirect contact with a child; or,~~
  - (10) ~~an order issued by a court in Indiana under IC 34-26-2.5-4 to enforce a foreign protection order~~ **a workplace violence restraining order.**
- (b) Whenever an ~~Indiana~~ **protective or no-contact or workplace violence restraining** order is issued **by a court in Indiana**, the ~~Indiana~~ **Indiana court must caption the order** ~~must be captioned~~ in a manner that indicates the type of order issued and the section of the Indiana Code that authorizes the protective **or no-contact** order. **The Indiana court shall also place, on the order, the court's hours of operation and telephone number, with area code, in order to facilitate enforcement of the order across county and state lines.**

## COMMENTARY

The Committee proposes the above amendments to accomplish the goal of simplifying the Indiana Code with respect to protective orders (including foreign protection orders) and no-contact orders. As will be seen below, this format is employed throughout the rest of the Indiana Code sections. It streamlines the civil protective orders and clearly defines “no-contact” orders. Also, this format does not employ bright-line distinctions between foreign protection orders and civil protective orders originating in Indiana.

### IC 5-2-9-5 (AMENDED).

A depository is established in the office of each sheriff and law enforcement agency in Indiana for the purpose of collecting, maintaining, and retaining the following:

- (1) ~~Indiana~~ **Protective** orders.
- (2) ~~Foreign protection~~ **No-contact** orders; and,
- (3) **Workplace violence restraining orders.**

## COMMENTARY

The Committee recommends these changes in order to keep the terminology consistent throughout the Indiana Code, where protective orders and no contact orders are concerned.

### IC 5-2-9-6 (AMENDED).

- (a) The clerk of a court that issues an ~~Indiana~~ **protective or no-contact or workplace violence restraining** order shall provide a copy of the **protective or no-contact or workplace violence** ~~Indiana~~ order to the following:
  - (1) Each party.
  - (2) A law enforcement agency of the municipality in which the person protected by the **protective or no-contact or workplace violence restraining** ~~Indiana~~ order resides.
  - (3) If the person protected by the **protective or no-contact or workplace violence restraining** ~~Indiana~~ order does not reside in a municipality, the sheriff of the county in which the protected person resides.
- (b) The clerk of a court that issues an **protective or no-contact or workplace violence restraining** ~~Indiana~~ order or the clerk of a court in which a petition is filed shall:
  - (1) maintain a confidential file to secure any confidential information about a protected person designated on a uniform statewide form prescribed by the division of state court administration; and
  - (2) provide a copy of the confidential form that accompanies the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order to the following:
    - (A) The sheriff of the county in which the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order was issued.
    - (B) The law enforcement agency of the municipality, if any, in which the protected person resides.
    - (C) Any other sheriff or law enforcement agency designated in the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order that has jurisdiction over the area in which a protected person may be located or protected.
- (c) A sheriff or law enforcement agency that receives an ~~Indiana~~ **protective or no-contact or workplace violence restraining** order under subsection (a) and a confidential form under subsection (b) shall:
  - (1) maintain a copy of the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order in the depository established under this chapter;
  - (2) enter:
    - (A) the date and time the sheriff or law enforcement agency receives the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order;

- (B) the location of the person who is subject to the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order, if reasonably ascertainable from the information received;
  - (C) the name and identification number of the officer who serves the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order;
  - (D) the manner in which the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order is served;
  - (E) the name of the petitioner and any other protected parties;
  - (F) the name, Social Security number, date of birth, and physical description of ~~each~~ **the person who is the subject of the Indiana protective or no-contact or workplace violence restraining** order, if reasonably ascertainable from the information received;
  - (G) the date the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order expires;
  - (H) a caution indicator stating whether a person who is the subject of the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order is believed to be armed and dangerous, if reasonably ascertainable from the information received; and
  - (I) if furnished, a Brady record indicator stating whether a person who is the subject of the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order is prohibited from purchasing or possessing a firearm **or ammunition** under federal law, if reasonably ascertainable from the information received; on the copy of the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order or the confidential form; and
- (3) establish a confidential file in which a confidential form that contains information concerning a protected person is kept.
- (d) An ~~Indiana~~ **protective or no-contact or workplace violence restraining** order may be removed from the depository established under this chapter only if the sheriff or law enforcement agency that administers the depository receives:
    - (1) a notice of termination on a form prescribed or approved by the division of state court administration;
    - (2) an order of the court; or
    - (3) a notice of termination and an order of the court.
  - (e) If an ~~Indiana~~ **protective or no-contact or workplace violence restraining** order in a depository established under this chapter is terminated, the person who obtained the protective order must file a notice of termination on a form prescribed or approved by the division of state court administration with the clerk of the court. The clerk of the court shall provide a copy of the notice of termination of an ~~Indiana~~ **protective or no-contact or workplace violence restraining** order to each of the depositories to which the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order and a confidential form were sent. The clerk of the court shall maintain the notice of termination in the court's file.
  - (f) If an ~~Indiana~~ **protective or no-contact or workplace violence restraining** order or form in a depository established under this chapter is extended or modified, the person who obtained the extension or modification must file a notice of extension or modification on a form prescribed or approved by the division of state court administration with the clerk

of the court. The clerk of the court shall provide a copy of the notice of extension or modification of an **Indiana protective or no-contact or workplace violence restraining** order to each of the depositories to which the ~~Indiana~~ order and a confidential form were sent. The clerk of the court shall maintain the notice of extension or modification of an **Indiana protective or no-contact or workplace violence restraining** order in the court's file.

- (g) The clerk of a court that issued an order terminating an ~~Indiana~~ **protective or no-contact or workplace violence restraining** order that is an emergency *ex parte* protective order shall provide a copy of the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order to the following:
- (1) Each party.
  - (2) The law enforcement agency provided with a copy of the ~~Indiana~~ **protective or no-contact or workplace violence restraining** order under subsection (a).

## COMMENTARY

The Committee recommends the above amendments because they will clarify the duties of clerks of the courts and also sheriffs and other law enforcement agencies regarding the maintenance of accurate information in the depositories. The Committee is also recommending the terminology be changed to “protective order” or “no-contact order” or “workplace violence restraining order” to clearly differentiate protection from abuse orders, issued between family and household members, from no-contact orders which may be issued in criminal, juvenile, C.H.I.N.S., and delinquency cases. The Committee has removed the word “Indiana” because of the recommended repeal of the next Section, concerning the registration of foreign protection orders.

### IC 5-2-9-6.3 (REPEALED).

- (a) ~~A county clerk that accepts a foreign protection order for filing under IC 34-26-2.5-12 shall provide a copy of the foreign protection order to the following:~~
- ~~(1) The person filing the foreign protection order.~~
  - ~~(2) A law enforcement agency of the municipality in which the person protected by the foreign protection order resides.~~
  - ~~(3) If the person protected by the foreign protection order does not reside in a municipality, the sheriff of the county in which the protected person resides.~~
- (b) ~~A county clerk that accepts a foreign protection order for filing under IC 34-26-2.5-12 shall:~~
- ~~(1) maintain a confidential file to secure any confidential information about a protected person designated on a uniform statewide form prescribed by the division of state court administration; and~~
  - ~~(2) provide a copy of the confidential form that accompanies the foreign protection order to the following:~~
    - ~~(A) The sheriff of the county where the county clerk maintains the county clerk's principal office.~~
    - ~~(B) The law enforcement agency of the municipality, if any, in which the protected person resides.~~

- ~~(C) Any other sheriff or law enforcement agency that the county clerk has reason to believe has jurisdiction over the area in which a protected person may be located or protected.~~
- ~~(c) — A sheriff or law enforcement agency that receives a foreign protection order under subsection (a) and a confidential form under subsection (b) shall~~
  - ~~(1) maintain a copy of the foreign protection order in the depository established under this chapter;~~
  - ~~(2) enter:~~
    - ~~(A) the name of the petitioner and any other protected parties;~~
    - ~~(B) the date and time the sheriff or law enforcement agency received the foreign protection order;~~
    - ~~(C) the location of each person who is the subject of the foreign protection order, if reasonably ascertainable from the information received;~~
    - ~~(D) the date the foreign protection order expires;~~
    - ~~(E) the tribunal and contact information, including the name and telephone number of the presiding officer or clerk of the issuing tribunal, if reasonably ascertainable from the information received;~~
    - ~~(F) the name, Social Security number, date of birth, and physical description of each person who is the subject of the foreign protection order, if reasonably ascertainable from the information received;~~
    - ~~(G) a caution indicator stating whether a person who is the subject of the foreign protection order is believed to be armed and dangerous, if reasonably ascertainable from the information received;~~
    - ~~(H) if furnished, a Brady record indicator stating whether a person who is the subject of the foreign protection order is prohibited from purchasing or possessing a firearm under federal law, if reasonably ascertainable from the information received;~~
    - ~~(I) the name and identification number of the officer who serves a foreign protection order, if reasonably ascertainable from the information received; and~~
    - ~~(J) the manner in which the foreign protection order is served, if reasonably ascertainable from the information received;~~
      - ~~on the copy of the foreign protection order or the confidential form; and~~
  - ~~(3) establish a confidential file in which a confidential form that contains information concerning the protected person is kept.~~
- ~~(d) — A foreign protection order may be removed from the depository established under this chapter only if the sheriff or law enforcement agency that administers the depository receives;~~
  - ~~(1) a notice of termination on a form prescribed or approved by the division of state court administration;~~
  - ~~(2) an order of the tribunal issuing the foreign protection order; or~~
  - ~~(3) a notice of termination and an order of a tribunal issuing the protection order.~~
- ~~(e) — If a foreign protection order in a depository established under this chapter is terminated, the person who obtained the protective order must file a notice of termination on a form prescribed or approved by the division of state court administration with the county clerk where the foreign protection order was filed. The county clerk shall provide a copy of the notice of termination of a foreign protection order or order of a tribunal to each of the~~

~~depositories to which the foreign protection order and a confidential form were sent. The county clerk shall maintain the notice of termination in the court's file.~~

- (f) ~~If a foreign protection order or form in a depository established under this chapter is extended or modified, the person who obtained the extension or modification must file a notice of extension or modification on a form prescribed or approved by the division of state court administration with the county clerk where the foreign protection order was filed. The county clerk shall provided a copy of the notice of extension or modification of a foreign protection order or order of a tribunal to each of the depositories to which the Indiana order and a confidential form were sent. The county clerk shall maintain the notice of extension or modification of a foreign protection order in the court's file.~~

### COMMENTARY

The Committee believes that the above section of the Indiana Code is not needed. The Committee believes that the language in IC 34-26-5-14 adequately covers situations involving protected persons who want to register their orders in Indiana. The Committee believes those will be few in number.

### IC 5-2-9-7 (AMENDED).

- (a) Any information:
- (1) in a uniform statewide confidential form or any part of a confidential form prescribed by the division of state court administration that must be filed with ~~an Indiana order or a foreign protection~~ **protective or no-contact or a workplace violence restraining** order; or
  - (2) otherwise acquired concerning a protected person; is confidential and may not be divulged to any respondent or defendant.
- (b) Information described in subsection (a) may only be used by:
- (1) a court;
  - (2) a sheriff;
  - (3) another law enforcement agency;
  - (4) a prosecuting attorney; or
  - (5) a court clerk;
- to comply with a law concerning the distribution of the information.

### COMMENTARY

The Committee proposes the above changes in order to maintain consistent terminology throughout the Indiana Code.

### IC 5-2-9-8 (AMENDED).



A law enforcement agency that receives a copy of an ~~Indiana order or a foreign protection~~ **protective or no-contact or workplace violence restraining** order shall enter the information received into the Indiana data and communication system (IDACS) computer under IC 5-2-5-12 **upon receiving a copy of the order.**

#### **COMMENTARY**

The Committee proposes the above changes in order to maintain consistent terminology throughout the Indiana Code.

## APPENDIX 2

### NECESSARY AMENDMENTS TO TITLE 31 OF THE INDIANA CODE

#### IC 31-9-2-29.5 (NEW). “Crime involving domestic or family violence.”

A “crime involving domestic or family violence” occurs when a family or household member commits, attempts to commit, and/or conspires to commit one or more of the following crimes against another family or household member:

- (1) Homicide Offenses as defined in IC 35-42-1;
- (2) Battery and Related Offenses as defined in IC 35-42-2;
- (3) Kidnapping—Confinement as defined in IC 35-42-3;
- (4) Sex Crimes as defined in IC 35-42-4;
- (5) Robbery as defined in IC 35-42-5;
- (6) Arson—Mischief as defined in IC 35-43-1;
- (7) Burglary—Trespass as defined in IC 35-43-2;
- (8) Disorderly Conduct as defined in IC 35-45-1;
- (9) Intimidation and Harassment as defined in IC 35-45-2;
- (10) Voyeurism as defined in IC 35-45-4;
- (11) Stalking as defined in IC 35-45-10; and,
- (12) Offenses Against Family as defined in IC 35-46-1-2 through -8, -12, and 15.1.

#### IC 31-9-2-42 (AMENDED).

“Domestic or family violence”, for purposes of all articles of Title 31 of the Indiana Code, ~~IC 31-14-13-2, IC 31-15, IC 31-16, and IC 31-17, includes conduct found by a court to be physical or sexual abuse against a party or child of a party, including conduct that is an element of an offense under IC 35-42, regardless of whether the conduct results in a criminal prosecution or occurs in the presence of a child of the parties. The term does not include:~~

- ~~(1) negligence or defamation by one (1) parent against the other parent or the child; or~~
- ~~(2) reasonable acts of self defense used to protect a parent or child from the conduct of the other parent.~~

means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

- (1) attempting to cause, threatening to cause, or causing physical harm to another family or household member;
- (2) placing a family or household member in fear of physical harm; or,
- (3) causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

## COMMENTARY

It is important to maintain an internally consistent definition of domestic or family violence throughout the Indiana Code. For the purposes of family law (paternity,

dissolution/separation, custody, visitation, delinquency, C.H.I.N.S., and termination), the definition of domestic or family violence should be as broad as possible. Courts should err on the side of safety of the adults and children whose lives are affected by violence when it comes to issues such as supervised visitation or custody. This definition is derived from the Model Code and matches the one proposed for Title 34.

**IC 31-9-2-44.5 (NEW). “Family or household member(s).”**

**“Family or household member(s)” include:**

- (1) adults or minors who are current or former spouses;**
- (2) adults or minors who are dating or who have dated;**
- (3) adults or minors who are engaged in, or who have engaged in, a sexual relationship;**
- (4) adults or minors who are related by blood or adoption;**
- (5) adults or minors who are related or formerly related by marriage;**
- (6) persons, whether adults or children, with current or former legally established relationships, in the positions of guardians or wards, custodians, or foster parents, or similar relationships;**
- (7) persons who have a child in common; and,**
- (8) minor children of a person described in a relationship that is described in paragraphs (1) through (7).**

**COMMENTARY**

The same definition of “family or household member” should apply throughout the Indiana Code. This definition is derived from the Model Code and matches the one proposed for Title 34 and 35. The law should not define a family differently depending upon which section of the Indiana Code happens to apply to the fact situation at hand.

**IC 31-14-13-2 (AMENDED).**

The court shall determine custody in accordance with the best interests of the child. In determining the child’s best interests, there is not a presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.**
- (2) The wishes of the child’s parents.**
- (3) The wishes of the child, with more consideration given to the child’s wishes if the child is at least fourteen (14) years of age.**
- (4) The interaction and interrelationship of the child with:**
  - (A) the child’s parents;**
  - (B) the child’s siblings; and**
  - (C) any other person who may significantly affect the child’s best interest.**
- (5) The child’s adjustment to home, school, and community.**
- (6) The mental and physical health of all individuals involved.**
- (7) Evidence of a pattern of domestic or family violence by either parent.**

- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 2.5(b) of this chapter.

## COMMENTARY

The Committee recommends that the term “domestic or family violence” be substituted for the existing term “domestic violence”. As discussed above, the definition of “domestic or family violence” in proposed IC 31-9-2-42 is somewhat more general than the existing definition of “domestic violence”, and thus includes more types of conduct in its ambit. This serves to widen the net of unacceptable behavior, and has the effect of protecting the child (and victimized parent) in question. Countless studies have documented the trauma experienced by children who witness domestic or family violence:

[c]hildren who witness family violence, intervene to stop such violence, or who are themselves abused are at elevated risk for behavioral, somatic, and emotional problems, both immediately and over the course of their childhood and young adult lives (Bowker *et al.*, 1988; Rosenberg, 1987; Rosenbaum and O’Leary, 1981). Boys who are abused and who witness violence against their mothers are at great risk of becoming wife- and child-abusers as adults (Hotaling and Sugarman, 1986). Research reveals that the risk of domestic or family violence directed both toward the child and the battered parent is frequently greater after separation than during cohabitation; this elevated risk often continues after legal interventions (Mahoney, 1992). The adverse consequences of observing or experiencing abuse can be averted or mitigated if the child is protected against future maltreatment and parental role-modeling of violence (Pagelow, 1989). Research also confirms that the post-separation adjustment of a child is facilitated by an award of sole custody to a non-abusive parent who offers the child a warm relationship, provides a predictable routine, imposes consistent, moderate discipline, and who buffers the child against parental conflict and abuse (Kelly, 1992; Furstenberg and Cherlin, 1991; Wallerstein, 1990). Model Code on Domestic and Family Violence, NCJFCJ (1994).

“Infants who witness violence are often characterized by poor health, poor sleeping habits, and excessive screaming (all of which may contribute to further violence toward their mother). Among preschoolers, ...researchers found signs of terror, as evidenced by the children’s yelling, irritable behavior, hiding, shaking, and stuttering... For older children and adolescents, violence at home usually becomes more commonplace, yet children in this age group are often very guarded and secretive about the family situation and often deny it. Adolescents from violent families may use aggression as a predominant form of problem solving, may project blame onto others, and may exhibit a high degree of anxiety...” (Jaffe *et al.*, 1990).

Considering the mountain of data on the overwhelmingly traumatic effects on children of witnessing family violence, it seems that using a broad definition of domestic and family violence, like the one in the Model Code, would protect children by limiting abusive parents' access to them.

#### **IC 31-14-14-5 (AMENDED).**

- (a) This section applies if a court finds that a noncustodial parent has been convicted of a ~~domestic battery under IC 35-42-2-1.3~~ **crime involving domestic or family violence** that was witnessed or heard by the noncustodial parent's child.
- (b) There is created a rebuttable presumption that the court shall order that the noncustodial parent's visitation with the child must be supervised:
  - (1) for at least one (1) year and not more than two (2) years immediately following the ~~domestic battery~~ conviction; or
  - (2) until the child becomes emancipated;whichever occurs first.

#### **COMMENTARY**

The Committee recommends the above changes for a number of reasons. First, it is important to have internally consistent terminology and definitions throughout the entire Indiana Code. Second, as noted in the Commentary to IC 35-41-1-6.5, the members of the Committee (and the drafters of the Model Code) intended for a wide scope of criminal behavior to be classified as domestic or family violence—a very accurate reflection of the somber reality of today's dysfunctional and violent families. Given the pathological nature of witnessing family violence, the General Assembly should act to protect as many children as possible from exposure to violence in the very places we would expect them to feel safest—their homes. The reader is referred to the preceding Commentary concerning the traumatic effects on children of witnessing family violence, and the extreme need for courts to have the authority to protect these children by limiting abusive parents' access to them.

#### **IC 31-14-16-1 (AMENDED).**

A parent may request a court to issue a protective order against the other parent **to prevent domestic or family violence** at any time before a final decree of paternity is issued under this article (or IC 31-6-6.1 before its repeal) if the parties have an unemancipated child. **The parent must file a petition pursuant to IC 34-26-5 in a pending case. A court may not require the moving party to give security. If the petitioner requests an *ex parte* protective order, the court shall immediately review the request pursuant to IC 34-26-5, and set hearings if required under IC 34-26-5. All procedures and laws put forth in IC 34-26-5 shall govern this matter.**

#### **COMMENTARY**

This Committee is combining this section of the Indiana Code with those immediately following it, IC §§ 31-14-16-2, -3, -4, -5, -6, -7, and -8. This is in keeping with the Committee's purpose of consolidating all possible civil protective orders into one location in the Indiana Code. From now on, individual parties, their lawyers, and judges will need to consult only one statute for protective orders in civil cases: IC 34-26-5.

#### **IC 31-14-16-2 (REPEALED).**

~~A court may not require the moving party under this chapter to give security.~~

#### **IC 31-14-16-3 (REPEALED).**

- ~~(a) If a party requests the court to issue an emergency protective order, the court shall immediately review the motion ex parte. If the court finds that there is probable cause to believe that the moving party, a member of the moving party's household, or the moving party's property was or is in danger of being abused or threatened with abuse by the respondent, the court shall:~~
- ~~(1) issue an emergency protective order directing the respondent to refrain from:~~
    - ~~(A) abusing, harassing, or disturbing the peace of the moving party by either direct or indirect contact;~~
    - ~~(B) abusing, harassing, or disturbing the peace of a member of the moving party's household, by either direct or indirect contact;~~
    - ~~(C) entering:~~
      - ~~(i) the property of the moving party; or~~
      - ~~(ii) any other property as specifically described in the motion; or~~
    - ~~(D) damaging any property of the moving party; and~~
  - ~~(2) set a date for the protective order hearing not more than thirty (30) days after the date the motion is filed with the court.~~
- ~~(b) An emergency protective order issued under this section expires on the date a protective order hearing is held.~~

#### **IC 31-14-16-4 (REPEALED).**

~~The court shall set a date for a hearing concerning a motion for an emergency protective order not more than thirty (30) days after the date the motion is filed with the court.~~

#### **IC 31-14-16-5 (REPEALED).**

~~If at least one (1) of the allegations described in a motion for an emergency protective order is proved by a preponderance of the evidence at the hearing on the motion, the court shall order the respondent to:~~

- ~~(1) refrain from abusing, harassing, or disturbing the peace of the moving party, by either direct or indirect contact;~~
- ~~(2) refrain from abusing, harassing, or disturbing the peace of a member of the moving party's household, by either direct or indirect contact;~~
- ~~(3) refrain from entering:~~
  - ~~(A) the property of the moving party;~~
  - ~~(B) jointly owned or leased property of the moving party and the respondent if the respondent is not the sole owner or lessee; or~~
  - ~~(C) any other property as specifically described in the motion;~~
- ~~(4) refrain from damaging any property of the moving party; or~~
- ~~(5) be evicted from the dwelling of the moving party if the respondent is not the sole owner or lessee of the moving party's dwelling.~~

#### **IC 31-14-16-6 (REPEALED).**

~~A protective order under this chapter:~~

- ~~(1) remains in effect for one (1) year; and~~
- ~~(2) at the request of a party, may be renewed for not more than one (1) year.~~

#### **IC 31-14-16-7 (REPEALED).**

~~When a court issues a protective order under this chapter:~~

- ~~(1) the clerk of the court shall comply with IC 5-2-9; and~~
- ~~(2) the moving party shall file with the clerk the confidential form prescribed or approved by the division of state court administration.~~

#### **IC 31-14-16-8 (REPEALED).**

- ~~(a) A court may not issue a joint or mutual protective order under this chapter. If both parties allege injury, the parties must do so by separate motions.~~
- ~~(b) The trial court shall:~~
  - ~~(1) review each motion separately; and~~
  - ~~(2) grant or deny each motion on its individual merits.~~
- ~~(c) If the trial court finds cause to grant both motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.~~

#### **IC 31-15-4-1 (AMENDED).**

In an action for dissolution of marriage under IC 31-15-2 or legal separation under IC 31-15-3, either party may file a motion for any of the following:

- (1) Temporary maintenance.
- (2) Temporary support or custody of a child of the marriage entitled to support.
- (3) Possession of property.

- (4) Counseling.
- (5) **A protective order under IC 34-26-5. If a party desires a protective order to prevent domestic or family violence, the party must file a petition pursuant to IC 34-26-5 in the pending case. A court may not require the moving party to give security. If the petitioner requests an *ex parte* protective order, the court shall immediately review the request pursuant to IC 34-26-5, and set hearings if required under IC 34-26-5. All procedures and laws put forth in IC 34-26-5 shall govern this matter.**

### COMMENTARY

The Committee is adding the language concerning protective orders in order to consolidate the different types of orders into one portion of the Indiana Code. See the Commentary following IC 31-14-16-1.

#### **IC 31-15-4-2 (AMENDED).**

The motion must be accompanied by an affidavit setting forth the following:

- (1) The factual basis for the motion.
- (2) The amounts requested or other relief sought.

**This Section does not apply to motions requesting a protective order under IC 34-26-5.**

#### **IC 31-15-4-3 (AMENDED).**

As a part of a motion for temporary maintenance, for support or custody of a child, or for possession of property under section 1 of this chapter or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order:

- (1) restraining any person from transferring, encumbering, concealing, or in any way disposing of any property, except in the usual course of business or for the necessities of life; **or,**
- ~~(2) enjoining any party from abusing, harassing, or disturbing the peace of the other party;~~
- ~~(3) excluding either party from:~~
  - ~~(A) the family dwelling;~~
  - ~~(B) the dwelling of the other; or~~
  - ~~(C) any other place;~~~~upon a showing that harm would otherwise result; or~~
- ~~(2) (4) granting temporary possession of property to either party.~~

### COMMENTARY

Since the stricken relief is available *via* IC 34-26-5 and Trial Rule 65, and in order to accomplish the goals of consolidation and simplification, the Committee recommends removing this language. TRO's should not address issues of domestic or family violence —instead, parties should seek protective orders under the consolidated Act.



#### IC 31-15-4-10 (AMENDED).

The court may not require joint counseling of the parties under section 9 of this chapter:

- (1) without the consent of both parties; or
- (2) if there is evidence that the other party has demonstrated a pattern of domestic **or family violence** against **÷ a family or household member**.  
~~(A) the party; or~~  
~~(B) a child of a party.~~

#### COMMENTARY

The Committee recommends the above amendment in order to have all of the terminology concerning family violence be as consistent as possible. Also, it is the Committee's opinion that substituting the term "family or household member" for "the party or a child of the party" covers more possible living arrangements and thus widens the scope of inappropriate conduct. For example, if the parties to the dissolution had an elderly parent or a disabled adult relative living with them, and if one of the parties was violent toward that person, it would constitute domestic or family violence. However, under the present statute, that would not be grounds for non-participation in counseling because the violence was not directed toward a spouse or child of the parties. Yet, the trauma and injury to the family is undeniably just as vivid.

#### IC 31-15-4-16 (REPEALED).

~~When a court issues an order under section 3(2) or 3(3) of this chapter:~~

- ~~(1) the clerk of the court that issued the order under section 3(2) or 3(3) of this chapter shall comply with IC 5-2-9; and~~
- ~~(2) the petitioner shall file a confidential form prescribed or approved by the division of state court administration with the clerk.~~

#### COMMENTARY

The Committee recommends repeal of this section because this procedure is covered in IC 34-26-5.

#### IC 31-15-5-1 (AMENDED).

- ~~(a) A party who obtains a temporary restraining order under IC 31-15-4-3(2) or IC 31-15-4-3(3) (or IC 31-1-11.5-7(b)(2) or IC 31-1-11.5-7(b)(3) before the repeal of IC 31-1-11.5-7) in a dissolution of marriage or legal separation action may request the court to issue a protective order for the same purposes set forth in the temporary restraining order:~~
  - ~~(1) at the final hearing of the dissolution of marriage or legal separation action; or~~
  - ~~(2) in the summary dissolution of marriage decree under IC 31-15-2-13.~~
- ~~(b) A party may request the issuance of a protective order under this section:~~

- ~~(1) at the final hearing of the dissolution of marriage or legal separation action;~~
- ~~(2) in the summary dissolution of marriage decree; or~~
- ~~(3) not later than sixty (60) days after the issuance of the final dissolution of marriage decree or legal separation decree.~~

**Either party may request a protective order to prevent domestic or family violence at any time during the dissolution of marriage or legal separation action by filing a petition pursuant to IC 34-26-5 in the pending case. A court may not require the moving party to give security. If the petitioner requests an *ex parte* protective order, the court shall immediately review the request pursuant to IC 34-26-5, and set hearings if required under IC 34-26-5. All procedures and laws put forth in IC 34-26-5 shall govern this matter.**

## **COMMENTARY**

These changes are consistent with the Committee's purpose of consolidating all possible civil protective orders into one location in the Indiana Code.

### **IC 31-15-5-2 (REPEALED).**

~~If:~~

- ~~(1) a party has not obtained a temporary restraining order or the factual basis or relief sought by the party in a temporary restraining order obtained by the party has changed; and~~
- ~~(2) the party requests a court to issue a protective order:~~
  - ~~(A) at a final hearing of the dissolution of marriage or legal separation action;~~
  - ~~(B) in a summary dissolution of marriage decree under IC 31-15-2-13; or~~
  - ~~(C) not later than sixty (60) days after the issuance of the final dissolution of marriage decree or legal separation decree;~~

~~the party must file an independent written, verified motion that establishes the factual basis or relief sought in the protective order.~~

### **IC 31-15-5-3 (REPEALED).**

~~If the parties have an unemancipated child, a party may request the court to issue a protective order against the other party at any time after issuance of the final dissolution of marriage decree. To request the protective order, the party must file an independent written, verified motion that establishes the factual basis and the relief sought in the protective order.~~

### **IC 31-15-5-4 (REPEALED).**

~~A court may not require the moving party under this chapter to give security.~~

### **IC 31-15-5-5 (REPEALED).**

The court shall set a date for a hearing concerning a motion for an emergency protective order described in section 9 of this chapter not more than thirty (30) days after the date the motion is filed with the court.

#### **IC 31-15-5-6 (REPEALED).**

~~At the hearing, if at least one (1) of the allegations described in the motion is proved by a preponderance of the evidence, the court shall order the respondent to:~~

- ~~(1) refrain from abusing, harassing, or disturbing the peace of the moving party, by either direct or indirect contact;~~
- ~~(2) refrain from abusing, harassing, or disturbing the peace of a member of the moving party's household, by either direct or indirect contact;~~
- ~~(3) refrain from entering:~~
  - ~~(A) the property of the moving party;~~
  - ~~(B) jointly owned or leased property of the moving party and the respondent if the respondent is not the sole owner or lessee; or~~
  - ~~(C) any other property;~~
- ~~as specifically described in the motion;~~
- ~~(4) refrain from damaging any property of the moving party; or~~
- ~~(5) be evicted from the dwelling of the moving party if the respondent is not the sole owner or lessee of the moving party's dwelling.~~

#### **IC 31-15-5-7 (REPEALED).**

~~The court may issue a protective order only upon showing of good cause.~~

#### **IC 31-15-5-8 (REPEALED).**

~~A protective order under this chapter (or IC 31-1-11.5-8.2 before its repeal):~~

- ~~(1) remains in effect for one (1) year; and~~
- ~~(2) at the request of a party, may be renewed for not more than one (1) year.~~

#### **IC 31-15-5-9 (REPEALED).**

~~(a) If a party requests the court to issue an emergency protective order, the court shall immediately review the motion ex parte. If the court finds that there is probable cause to believe that the moving party, a member of the moving party's household, or the moving party's property was or is in danger of being abused or threatened with abuse by the respondent, the court shall:~~

- ~~(1) issue an emergency protective order directing the respondent to refrain from:~~
  - ~~(A) abusing, harassing, or disturbing the peace of the moving party by either direct or indirect contact;~~
  - ~~(B) abusing, harassing, or disturbing the peace of a member of the moving party's household, by either direct or indirect contact;~~
  - ~~(C) entering the property of the moving party or any other property as specifically described in the motion; or~~

- ~~(D) damaging any property of the moving party; and~~
- ~~(2) set a date for the protective order hearing not more than thirty (30) days after the date the motion is filed with the court.~~
- ~~(b) An emergency protective order issued under this section (or IC 31-1-11.5-8.2(e) before its repeal) expires on the date a protective order hearing is held.~~

#### **IC 31-15-5-10 (REPEALED).**

~~If a court issues a protective order under this chapter:~~

- ~~(1) the clerk of the court shall comply with IC 5-2-9; and~~
- ~~(2) the petitioner shall file a confidential form prescribed or approved by the division of state court administration with the clerk.~~

#### **IC 31-15-5-11 (REPEALED).**

- ~~(a) A court may not issue a joint or mutual protective order or restraining order under:~~
  - ~~(1) IC 31-15-4-3(2);~~
  - ~~(2) IC 31-15-4-3(3); or~~
  - ~~(3) this chapter.~~
- ~~(b) If both parties allege injury, the parties must do so by separate motions.~~
- ~~(c) The trial court shall:~~
  - ~~(1) review each motion separately; and~~
  - ~~(2) grant or deny each motion on its individual merits.~~
- ~~(d) If the trial court finds cause to grant both motions, the court shall do so:~~
  - ~~(1) by separate orders; and~~
  - ~~(2) with specific findings justifying the issuance of each order.~~

### **COMMENTARY**

The Committee recommends the repeal of the rest of Chapter 5 because it is no longer needed. Once a party requests a protective order, all of the procedures, deadlines, requirements, etc. in IC 34-26-5 will govern.

#### **IC 31-17-2-8 (AMENDED).**

The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parent or parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.

- (4) The interaction and interrelationship of the child with:
  - (A) the child's parent or parents;
  - (B) the child's sibling; and
  - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
  - (A) home;
  - (B) school; and
  - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic **or family** violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.

### COMMENTARY

The Committee refers the reader to the Commentary following IC 31-14-13-2.

#### IC 31-17-2-8.1 (NEW).

- (a) **This section applies if a court finds that a parent has been convicted of a crime involving domestic or family violence that was witnessed or heard by any child(ren) of the parties.**
- (b) **There is created a rebuttable presumption that the court shall order that the convicted parent not be eligible to have custody of any child(ren) of the parties, and that the convicted parent's visitation with the child(ren), if any, must be supervised:**
  - (1) for at least one (1) year and not more than two (2) years immediately following the conviction; or**
  - (2) until the child(ren) become(s) emancipated;****whichever occurs first.**

### COMMENTARY

The Committee refers the reader to the Commentary following IC 31-14-14-5. This change makes the law concerning custody and visitation after a dissolution of marriage or legal separation consistent with the law concerning custody and visitation after establishing paternity.

**AMEND: CHANGE THE TITLE OF IC 31-34-17 FROM "PROTECTIVE ORDERS" TO "NO-CONTACT ORDERS"**

#### IC 31-34-17-3 (AMENDED).

A petition seeking to ~~refrain~~ **restrain** a person from contact must be entitled "In the Matter of a ~~Protective No-Contact~~ Order for \_\_\_\_\_". The Petition must allege the following:

- (1) That the respondent is likely to have direct or indirect contact with the child in the absence of an order under this chapter.
- (2) That the child has been adjudicated a child in need of services.
- (3) That the best interests of the child will be served if the person refrains from direct or indirect contact with the child.

### COMMENTARY

The Committee proposes this amendment so that the distinction between “no-contact” orders issued as a part of C.H.I.N.S. cases and “regular” civil protective orders is made clear. Since the orders issued in C.H.I.N.S. cases prohibit contact between a person and the child, the Committee suggests that they be called “no-contact” orders. The term “protective order” will mean an order issued under IC 34-26-5.

This slight change in terminology will help courts, parties affected by the orders, and law enforcement officers avoid the current confusing situation that frequently arises when a person states that he or she “has a protective order.”

#### **IC 31-34-20-2 (AMENDED).**

If a court enters a dispositional decree **containing a No-Contact Order** issued under section 1(7) of this chapter:

- (1) the clerk of the court that enters a dispositional decree **containing a No-Contact Order** under section 1(7) of this chapter shall comply with IC 5-2-9; and
- (2) the petitioner shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

### COMMENTARY

The Committee’s rationale for changing the language in this statute is the same as supporting the change of language in IC 31-34-17-3.

#### **AMEND: CHANGE THE TITLE OF IC 31-37-16 FROM “PROTECTIVE ORDERS” TO “NO-CONTACT ORDERS”**

#### **IC 31-37-16-3 (AMENDED).**

A petition seeking to ~~refrain~~ **restrain** a person from contact with a child must be entitled “In the Matter of a ~~Protective~~ **No-Contact** Order for \_\_\_\_\_”. The petition must allege the following:

- (1) That the respondent is likely to have direct or indirect contact with the child in absence of an order under this chapter.
- (2) That the child has been adjudicated a delinquent child.

- (3) That the best interests of the child will be served if the person refrains from direct or indirect contact with the child.

### COMMENTARY

The Committee is suggesting this change to orders issued as a part of delinquency proceedings for the same reason stated in the Commentary to IC 31-34-17-3, the analogous portion of the C.H.I.N.S. statute.

### IC 31-37-19-2 (AMENDED).

If a court enters a dispositional decree **including a No-Contact Order issued** under section 1(7) of this chapter:

- (1) the clerk of the court that enters a dispositional decree **including a No-Contact Order issued** under section 1(7) of this chapter shall comply with IC 5-2-9; and
- (2) the petitioner shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

### COMMENTARY

Please see the Commentary following the amendment to IC 31-34-20-2.

### IC 31-37-19-22 (AMENDED).

If a court issues a dispositional decree **including a No-Contact Order issued** under section 6(b)(2)(G) of this chapter:

- (1) the clerk of the court shall comply with IC 5-2-9; and
- (2) the petitioner shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

### COMMENTARY

Please see the Commentary following the amendment to IC 31-34-20-2.

## **APPENDIX 3**

### **NECESSARY AMENDMENTS TO TITLE 33 OF THE INDIANA CODE**

#### **IC 33-5-5.1-8 (AMENDED).**

Sec.8. (a) The court may appoint such number of probate commissioners, juvenile referees, bailiffs, court reporters, probation officers, and such other personnel, including but not limited to an administrative officer, as shall in the opinion of the court be necessary to facilitate and transact the business of the court. In addition to the personnel authorized under this subsection and IC 31-31-3, the judges of the Allen superior court-civil division may jointly appoint not more than four (4) full-time magistrates under IC 33-4-7 to serve the Allen superior court-civil division. The judges of the Allen superior court-civil division may jointly assign any such magistrates the duties and powers of a probate commissioner. In addition to the personnel authorized under this subsection and IC 31-31-3, the judge of the Allen superior court-criminal division may jointly appoint not more than three (3) full-time magistrates under IC 33-4-7 to serve the Allen superior court-criminal division. Any such magistrate serves at the pleasure of, and continues in office until jointly removed by, the judges of the division that appointed the magistrate. All appointments made under this subsection shall be made without regard to the political affiliation of the appointees. The salaries of the above personnel shall be fixed and paid as provided by law. If the salaries of any of the above personnel are not provided by law, the amount and time of payment of such salaries shall be fixed by the court, to be paid out of the county treasury by the county auditor, upon the order of the court, and be entered of record. The officers and persons so appointed shall perform such duties as are prescribed by the court. Any such administrative officer appointed by the court shall operate under the jurisdiction of the chief judge and shall serve at the pleasure of the chief judge. Any such probate commissioners, magistrates, juvenile referees, bailiffs, court reporters, probation officers, and other personnel appointed by the court shall serve at the pleasure of the court.

(b) Any probate commissioner so appointed by the court may be vested by said court with all suitable powers for the handling and management of the probate and guardianship matters of the court, including the fixing of all bonds, the auditing of accounts of estates and guardianships and trusts, acceptance of reports, accounts, and settlements filed in said court, the appointment of personal representatives, guardians, and trustees, the probating of wills, the taking and hearing of evidence on or concerning such matters, or any other probate, guardianship, or trust matters in litigation before such court, the enforcement of court rules and regulations, the making of reports to the court concerning his doings in the above premises, including the taking and hearing of evidence together with such commissioner's findings and conclusions regarding the same, all of such matters, nevertheless, to be under the final jurisdiction and decision of the judges of said court.

(c) Any juvenile referee so appointed by the court may be vested by said court with all suitable powers for the handling and management of the juvenile matters of the court, including the fixing of bonds, the taking and hearing of evidence on or concerning any juvenile matters in litigation before the court, the enforcement of court rules and regulations, the making of reports



to the court concerning his doings in the above premises, all of such matters, nevertheless, to be under final jurisdiction and decision of the judges of said court.

(d) For any and all of the foregoing purposes, any probate commissioner and juvenile referee shall have the power to summon witnesses to testify before the said commissioner and juvenile referee, to administer oaths and take acknowledgements in connection with and in furtherance of said duties and powers.

(e) The powers of a magistrate appointed under this section include the powers provided in IC 33-4-7 and the power to enter a final order or judgment in any proceeding involving matters specified in IC 33-5-2-4 (jurisdiction of small claims docket) or IC 34-26-2-5 (protective order to prevent ~~abuse~~ **domestic or family violence**).

#### COMMENTARY

The Committee proposes changing the Personnel section of the Allen County courts' enabling statute to conform with the changes in the citation to the protective order act.

#### IC 33-5-40-73 (AMENDED).

(a) After August 31, 1999, the court may appoint two (2) full-time magistrates under IC 33-4-7 to serve the court using the selection method provided by IC 36-1-8-10(b)(1) or IC 36-1-8-10(b)(2). Not more than one (1) of the magistrates appointed under this section may be a member of the same political party.

(b) A magistrate continues in office until removed by the judges of the court.

(c) The powers of a magistrate appointed under this section include the powers provided in IC 33-4-7 and the power to enter a final order or judgment in any proceeding involving matters specified in IC 33-5-2-4 (jurisdiction of small claims docket) or IC 34-26-2-5 (protective orders to prevent ~~abuse~~ **domestic or family violence**).

#### COMMENTARY

The Committee proposes changing the Magistrate section of the St. Joseph County courts' enabling statute to conform with the changes in the citation to the protective order act.

#### IC 33-17-1-11 (REPEALED).

~~(a) The clerk shall provide each person filing a petition for the issuance of a protective order under IC 34-26-2 without the assistance of an attorney the following information:~~

~~(1) The procedure for obtaining a protective order.~~

~~(2) When a protective order becomes effective.~~

~~(3) Procedures to follow when a protective order is violated.~~

- ~~(4) Information concerning the waiver of fees under IC 33-19-4.5.~~
- ~~(b) The information required under subsection (a) must be printed in a manner that can be easily understood by a person who is not an attorney.~~
- ~~(c) The attorney general shall develop an appropriate form to provide the information referred to in subsection (a).~~

## COMMENTARY

The Committee recommends this statute be repealed in its entirety, for two reasons. First, it is consistent with the goal of consolidating as much of Indiana's protective order law as possible into one location within the Indiana Code. Second, the Model Code contains provisions for both clerk assistance and fee waiver, in IC §§ 34-26-5-3 and -13, respectively.

### IC 33-19-4.5 (the entire chapter) (REPEALED).

~~Chapter 4.5. Costs Related to Orders to Protect a Person From Dating Violence, Domestic Violence, Sexual Assault, or Stalking~~

~~Sec.1. This chapter applies to a person who files a motion, petition, or complaint with a court seeking a protective order or an order to enforce a foreign protection order to protect the person from any of the following:~~

- ~~(1) — Dating Violence.~~
- ~~(2) — Domestic Violence.~~
- ~~(3) — Sexual Assault.~~
- ~~(4) — Stalking.~~

~~Sec.2. As used in this chapter, "dating violence" has the meaning set forth in 42 U.S.C. 3796gg-2.~~

~~Sec.3. (a) As used in this chapter, "domestic violence" has the meaning set forth in 42 U.S.C. 3796gg-2.~~

~~Sec.4. As used in this chapter, "foreign protection order" has the meaning set forth in IC 34-6-2-48.5.~~

~~Sec.5. As used in this chapter, "Indian tribe" has the meaning set forth in IC 34-6-2-66.7.~~

~~Sec.6. (a) As used in this chapter, "protective order" has the meaning set forth in IC 34-6-2-121.6.~~

~~Sec.7. As used in this chapter, "sexual assault" means conduct that constitutes:~~

- ~~(1) a misdemeanor or felony under IC 35-42-4 (sex crimes) or IC 35-46-1-3 (incest);~~
- ~~(2) a misdemeanor or felony under the laws of the United States, a state, or an Indian tribe that is substantially similar to an offense described in subdivision (1); or~~
- ~~(3) an attempt to engage in conduct described in subdivision (1) or (2); regardless of whether the conduct results in criminal prosecution or the person who engages in the conduct is an adult.~~

~~Sec.8. As used in this chapter, "stalking" means conduct that constitutes:~~

- ~~(1) IC 35-45-10-5 (stalking);~~
- ~~(2) a misdemeanor or felony under the laws of the United States, a state, or an Indian tribe that is substantially similar to an offense described in subdivision (1); or~~
- ~~(3) an attempt to engage in conduct described in subdivision (1) or (2); regardless of whether the conduct results in criminal prosecution or the person who engages in the conduct is an adult.~~

~~Sec.9. Notwithstanding any other law, the clerk may not collect a fee or other reimbursement for the filing, issuance, registration, or service of any of the following:~~

- ~~(1) A warrant related to an action for a protective order or to enforce a foreign protection order.~~
- ~~(2) A motion, petition, or complaint for a protective order or to enforce a foreign protection order.~~
- ~~(3) A protective order or an order enforcing a foreign protection order.~~
- ~~(4) A witness subpoena related to an action for a protective order or to enforce a foreign protection order.~~

~~If a person seeks a protective order or an order enforcing a foreign protection order as part of another proceeding, the clerk may not collect a separate fee or reimbursement for the filing, issuance, registration, or service of the papers described in subdivisions (1) through (4).~~

~~Sec.10. Prepayment of the costs described in section 9 of this chapter are not required if the person, or a person acting on the person's behalf, alleges under oath or affirmation in the motion, petition, or complaint seeking the protective order or enforcing a foreign protection order that the person is or fears that the person will be a victim of dating violence, domestic violence, sexual assault, or stalking.~~

~~Sec.11. Unless the court determines that a request for a protective order or the enforcement of a foreign protection order is frivolous, fraudulent, or groundless, the court shall waive the obligation that the person seeking the protective order or order enforcing a foreign protection order would otherwise have to pay the costs described in section 9 of this chapter if:~~

- ~~(1) the person, or another person acting on the person's behalf, makes the allegations described in section 10 of this chapter; or~~
- ~~(2) the court otherwise determines that the person is a person seeking protection from dating violence, domestic violence, sexual assault, or stalking.~~

~~Sec.12. This chapter does not prevent the collecting of costs from a party against whom a protective order or order enforcing a foreign protection order is sought.~~

## COMMENTARY

The Committee recommends this chapter be repealed in its entirety for a number of reasons. First, it is consistent with the goal of consolidating as much of Indiana's protective order law as possible into one section of the Indiana Code. Second, the language in this chapter concerning the waiver of fees is covered in the Committee's adaptation of the Model Code, IC 34-26-5-13. Third, this chapter was extremely complex—a necessity engendered by the fact that Indiana's present civil protective order statute made the relief possible to any person, regardless of whether he or she was a victim of domestic or family violence. Thus, this chapter was required to distinguish between those petitioners who were eligible for fee waivers (*i.e.*, victims of domestic or family violence) and those who were not (such as neighbors, co-workers, schoolmates, and the like). Since 34-26-5 limits the availability of protective orders to victims of domestic or family violence, that means that every petitioner will qualify for a fee waiver. As for the fees which might be charged in relation to “enforcing foreign protection orders”, something also mentioned in this chapter, the Committee is proposing changes in the Indiana Code which will eliminate the necessity for such problematic, independent civil actions as the registration of, or issuance of orders enforcing, foreign orders.

## APPENDIX 4

### NECESSARY AMENDMENTS TO TITLE 34 OF THE INDIANA CODE

#### IC 34-6-2-1 (REPEALED).

~~“Abuse”, for purposes of IC 34-26-2, includes conduct or threatened conduct that if completed would cause:~~

- ~~(1) bodily injury as defined by IC 35-41-1; or~~
- ~~(2) damage to property.~~

#### COMMENTARY

The Committee recommends this section be repealed because the Model Code refers to “domestic or family violence” as opposed to “abuse”. The Committee defines “domestic or family violence” elsewhere.

#### IC 34-6-2-34.5 (NEW). “Domestic or family violence.”

**“Domestic or family violence” means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:**

- (1) attempting to cause, threatening to cause, or causing physical harm to another family or household member;**
- (2) placing a family or household member in fear of physical harm;**
- or,**
- (3) causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.**

#### COMMENTARY

Domestic or family violence as defined this section identifies the conduct that is commonly recognized as domestic or family violence. The definition incorporates assaultive and non-violent conduct that injures, threatens, or attempts injury. The term “physical harm” permits a court to exercise broad discretion in evaluating whether the conduct has resulted in an injury that might not typically be identified as a medical injury. The definition recognizes that abusive persons jeopardize partners and family members by threatening physical harm or acting in a manner to instill fear. Use of the word “fear” in paragraph (2) refers to a “reasonable person” standard—acts that would place a reasonable person in fear of physical harm. Model Code on Domestic and Family Violence, NCJFCJ (1994).

This objective standard is consistent with that employed in the Stalking crime. Indiana Code 35-45-10-1 defines “stalk” as “...a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel

terrorized, frightened, intimidated, or threatened.” However, this standard conflicts slightly with the more subjective test outlined by the Indiana Court of Appeals in Tillman v. Snow, 571 N.E.2d 578 (Ind. Ct. App. 1991).

**IC 34-6-2-44.5 (NEW). “Family or household members”.**

**“Family or household members” include:**

- (1) adults or minors who are current or former spouses;**
- (2) adults or minors who are dating or who have dated;**
- (3) adults or minors who are engaged in, or who have engaged in, a sexual relationship;**
- (4) adults or minors who are related by blood or adoption;**
- (5) adults or minors who are related or formerly related by marriage;**
- (6) persons, whether adults or children, with current or former legally established relationships, in the positions of guardians or wards, custodians, or foster parents, or similar relationships;**
- (7) persons who have a child in common; and,**
- (8) minor children of a person in a relationship that is described in paragraphs (1) through (7).**

**COMMENTARY**

This Section identifies the person to be protected by the various remedies set forth herein. The definition of “family or household member” is broad. Cohabitation is not a prerequisite for eligibility, and the relationship between the victim and the perpetrator need not be current. The Committee recognizes that violence may continue after the formal or informal relationship has ended. Model Code on Domestic and Family Violence, NCJFCJ (1994).

This definition is more general than the federal definition of “intimate partner” found in the federal full faith and credit law, 18 U.S.C. § 2266 (7). However, the federal definition specifically allows for full faith and credit to be given to orders from those states which define the class of protected people more broadly:

The term “spouse or intimate partner” includes...a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; and...any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

18 U.S.C. § 2266 (7) (A) (i), (B).

**IC 34-6-2-48.5 (AMENDED).**

“Foreign protection order”, for purposes of IC 34-26-~~2-5-5-14~~, means a protection order issued by a tribunal of:

- (1) another state; or
- (2) an Indian tribe;

regardless of whether the protection order was issued in an independent proceeding or as part of another criminal or civil proceeding.

**IC 34-6-2-49 (AMENDED).**

“Governmental entity”, for purposes of IC 34-13-2, IC 34-13-2, **and** IC 34-13-4, ~~and IC 34-26-2.5~~, means the state or a political subdivision of the state.

**IC 34-6-2-66.7. (AMENDED).**

“Indian tribe”, for purposes of sections 48.5, 71.7, and 121.6 of this chapter and IC 34-26-2.5 **5-14**, means an Indian:

- (1) tribe;
- (2) band;
- (3) pueblo;
- (4) nation; or
- (5) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.

**IC 34-6-2-71.7 (AMENDED).**

“Issuing state or Indian tribe”, for purposes of IC 34-26-2.5 **5-14**, means the state or Indian tribe whose tribunal issues a protection order.

**IC 34-6-2-73.3 (AMENDED).**

“Law enforcement officer”, for purposes of IC 34-26-2.5 **5-14** has the meaning set forth in IC 35-41-1-17.

**IC 34-6-2-86.4 (REPEALED).**

~~“Mutual foreign protection order”, for purposes of IC 34-26-2.5, means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.~~

**COMMENTARY**

The Committee recommends the repeal of this section since the matter of mutual foreign protection orders is addressed in IC 34-26-5-14

**IC 34-6-2-103 (AMENDED).**

(a) “Person”, for purposes of IC 34-14, has the meaning set forth in IC 34-14-1-13.

(b) “Person”, for purposes of IC 34-19-2, has the meaning set forth in IC 35-41-1.

(c) “Person”, for purposes of IC 34-24-4, means:

- (1) an individual;
- (2) a governmental entity;
- (3) a corporation;
- (4) a firm;
- (5) a trust;
- (6) a partnership; or
- (7) an incorporated or unincorporated association that exists under or is authorized by the laws of this state, another state, or a foreign country.

~~(d) “Person”, for purposes of IC 34-26-2, includes individuals at least 18 years of age and emancipated minors.~~

~~(e)~~ (d) “Person”, for purposes of IC 34-26-4, has the meaning set forth in IC 35-41-1-22.

~~(f)~~ (e) “Person”, for purposes of IC 34-30-5, means any of the following:

- (1) An individual.
- (2) A corporation.
- (3) A partnership.
- (4) An unincorporated association.
- (5) The state (as defined in IC 34-6-2-140).
- (6) A political subdivision (as defined in IC 34-6-2-110).
- (7) Any other entity recognized by law.

~~(g)~~ (f) “Person”, for purposes of IC 34-30-6, means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity that:

- (1) has qualifications or experience in:
  - (A) storing, transporting, or handling a hazardous substance or compressed gas;
  - (B) fighting fires;
  - (C) emergency rescue; or
  - (D) first aid care; or
- (2) is otherwise qualified to provide assistance appropriate to remedy or contribute to the remedy of the emergency.

~~(h)~~ (g) “Person”, for purposes if IC 34-30-18, includes:

- (1) an individual;
- (2) an incorporated or unincorporated organization or association;
- (3) the state of Indiana;
- (4) a political subdivision (as defined in IC 36-1-2-13);
- (5) an agency of the state or a political subdivision; or
- (6) a group of such persons acting in concert.

~~(i)~~ (h) “Person”, for purposes of sections 42, 43, 69, and 95 of this chapter, means an individual, an incorporated or unincorporated organization or association, or a group of such persons acting in concert.

## COMMENTARY

The Committee is recommending that the definition of “person” for the purposes of the protective order statute be removed from this portion of the Indiana Code. The Committee defines who is eligible to petition for a protective order in IC 34-26-5-2. Keeping that definition, which is a part of the Model Code on Domestic and Family Violence, furthers the purpose of the Act, and also serves the goal of consolidation of as much of the protective order laws as possible.

### IC 34-6-2-121.4 (AMENDED).

~~“Protected individual”, for purposes of section 86.4 of this chapter and IC 34-26-2.5, means an individual protected by a protection order. A “protected person” is a petitioner, or a family or household member of the petitioner, who is protected by the terms of a civil protective order issued under IC 34-26-5.~~

## COMMENTARY

This Section clarifies that a “protected person” is one who is covered by the terms of the civil protective order, even though that person may not be the actual petitioner.

### IC 34-6-2-121.6 (AMENDED).

(a) “Protection order”, **(or “order for protection”)** for purposes of sections 48.5, 121.4, and 130.7 of this chapter and IC 34-26-2.5—**5**, means an injunction or other order, issued by a tribunal of the issuing state or Indian tribe, to prevent an individual from:

- (1) engaging in violent or threatening acts against;
- (2) engaging in harassment of;
- (3) engaging in contact or communication with; or
- (4) being in physical proximity to;

another person, including temporary and final orders issued by civil and criminal courts.

(b) The term does not include a support or child custody order issued under the dissolution and child custody laws of a state or Indian tribe, except to the extent that the order qualifies as a protective order under subsection (a) and is entitled to full faith and credit under a federal law other than 18 U.S.C. 2265.

(c) The term applies to an order regardless of whether the order is obtained by filing an independent action or as a pendente lite order in another proceeding if any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.



**IC 34-6-2-123 (AMENDED).**

“Public employee”, for purposes of IC 34-13-2, IC 34-13-3, **and** IC 34-13-4, ~~and IC 34-26-2.5,~~ has the meaning set forth in section 38 of this chapter.

**IC 34-6-2-130.7 (AMENDED).**

“Respondent”, for purposes of section 86.4 of this chapter and IC 34-26-~~2.5--~~**5**, means the individual against whom the enforcement of a protection order is sought.

**IC 34-6-2-138 (AMENDED).**

“Sheriff”:

- ~~(1) for purposes of IC 34-26-2.5, refers to the county sheriff; and~~
- ~~(2)~~ **(1)** for purposes of IC 34-47-4, means the sheriff of the county in which a court issues s writ of attachment under IC 34-47-4 (or IC 34-4-9 before its repeal).

**IC 34-6-2-140 (AMENDED).**

“State”:

- (1) for purposes of IC 34-13-3 means Indiana and its state agencies; and
- (2) for purposes of sections 48.5 and 71.7 of this chapter and IC 34-26-~~2.5--~~**5**, has the meaning set forth in IC 1-1-4-5.

**IC 34-6-2-144.2 (AMENDED).**

“Tribunal”, for purposes of sections 48.5 and 121.6 of this chapter and IC 34-26-~~2.5--~~**5**, means a court, agency, or other entity authorized by law to issue or modify a protection order.

**IC 34-26-2 (the entire chapter) (REPEALED).**

~~Chapter 2. Protective Order to Prevent Abuse.~~

~~Sec.1. A person may petition any court of record for a protective order on behalf of that person, an employee of the petitioner, or a member of the petitioner’s household.~~

~~Sec.2. The nonconfidential petition:~~

- ~~(1) must include the name of the petitioner and the name and address (if known) of the respondent;~~
- ~~(2) must include any allegation concerning the date or manner of specific acts or feared acts of abuse, harassment, or disruption of the peace of the petitioner or members of the petitioner’s household or any allegations concerning specific damage to or the fear of damage to any property of the petitioner;~~
- ~~(3) must include a request that, if the court grants the protective order, the court shall order the respondent:~~
  - ~~(A) to refrain from abusing, harassing, or disturbing the peace of the petitioner, by either direct or indirect contact;~~

- (B) to refrain from abusing, harassing, or disturbing the peace of a member of the petitioner's household, by either direct or indirect contact;
  - (C) to refrain from entering the property of the petitioner, jointly owned or leased property of the petitioner and respondent if the respondent is not the sole owner or lessee, or any other property as specifically described in the petition;
  - (D) to refrain from damaging any property of the petitioner;
  - (E) if the petitioner and respondent are married and if a proceeding for dissolution of marriage or legal separation is not pending:
    - (i) — to be evicted from the dwelling of the petitioner if the respondent is not the sole owner or lessee of the petitioner's dwelling;
    - (ii) — to not transfer, encumber, damage, conceal, or otherwise dispose of property jointly owned with the petitioner or that is an asset of the marriage;
    - (iii) — to pay child support to the custodian of any minor children of the parties alone or with the other party;
    - (iv) — to pay maintenance to the other party; or
    - (v) — to perform a combination of acts listed in items (i) through (iv);
  - (4) must be sworn to by the petitioner;
  - (5) must include a request that the court set a date for a protective order hearing under this chapter;
  - (6) must be accompanied by a uniform statewide confidential form concerning protective orders prescribed by the division of state court administration that has been completed by the petitioner or the person on whose behalf the petition is filed; and
  - (7) may include a request that the court order counseling or other social services, including domestic violence education, for the petitioner, the respondent, or both.
- Sec.3. (a) This section applies if an emergency exists concerning the relief requested in section 2(3)(A), 2(3)(B), 2(3)(C), or 2(3)(D) of this chapter.
- (b) The petitioner must include a statement in the petition explaining why the emergency exists and request the court to immediately issue an emergency protective order that requires the respondent to immediately refrain from doing the acts described in section 2(3)(A) through 2(3)(D) of this chapter or comply with the order.
- Sec.4. (a) The court:
- (1) shall order the clerk of the court to waive any filing fees required for a proceeding under this chapter if IC 33-19-4.5 applies; and
  - (2) may order filing fees to be paid by the respondent after a hearing held under this chapter.
- (b) The court may:
- (1) order the clerk of the court to waive any filing fees required for a proceeding under this chapter if the petitioner demonstrates by affidavit that the petitioner is unable to pay the fees due to all relevant circumstances; and
  - (2) order filing fees to be paid by the respondent after a hearing held under this chapter.
- Sec.5. If a person requests a court to issue an emergency protective order, the court shall immediately review the petition ex parte. If the court finds that there is probable cause to believe that the petitioner, a member of the petitioner's household, or that the petitioner's property was or is in danger of being abused or threatened with abuse by the respondent, the court shall:

- ~~(1) issue an emergency protective order described in section 6 of this chapter, and~~
- ~~(2) set a date for the protective order hearing not more than thirty (30) days after the date the petition is filed with the court.~~

~~Sec.6. The emergency protective order issued under section 5 of this chapter may direct the respondent to refrain from:~~

- ~~(1) abusing, harassing, or disturbing the peace of the petitioner by either direct or indirect contact;~~
- ~~(2) abusing, harassing, or disturbing the peace of a member of the petitioner's household, by either direct or indirect contact;~~
- ~~(3) entering the property of the petitioner or any other property as specifically described in the petition; or~~
- ~~(4) damaging any property of the petitioner.~~

~~Sec.7. An emergency protective order issued under section 5 of this chapter (or IC 34-4-5.1-2.3 before its repeal) expires:~~

- ~~(1) sixty (60) days after the date the emergency protective order is issued; or~~
- ~~(2) the date a court issues an order stating that the emergency protective order has expired, whichever occurs first.~~

~~Sec.8. When a court issues an emergency protective order under section 5 of this chapter that directs the respondent to refrain from the acts described in section 6(1), 6(2), or 6(3) of this chapter:~~

- ~~(1) the clerk of the court shall comply with IC 5-2-9; and~~
- ~~(2) the petitioner shall file a completed copy of the uniform statewide confidential form prescribed by the division of state court administration.~~

~~Sec.9. When a court issues an order terminating an emergency protective order, the clerk of the court shall comply with IC 5-2-9-6(g).~~

~~Sec.10. (a) A court may not issue a joint or mutual protective order, an emergency protective order, or a restraining order under:~~

- ~~(1) section 2(3)(A) of this chapter;~~
- ~~(2) section 2(3)(B) of this chapter;~~
- ~~(3) section 2(3)(C) of this chapter; or~~
- ~~(4) section 5 of this chapter.~~

~~(b) If both parties allege injury, the parties shall do so by separate motions. The trial court shall review each motion separately, and grant or deny each motion on its individual merits. If the trial court finds cause to grant both motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.~~

~~Sec.11. (a) When a petition is filed, the clerk shall issue a summons to appear at a hearing to the respondent that:~~

- ~~(1) gives notice of the date, time, and place of the hearing; and~~
- ~~(2) informs the respondent that the respondent must appear before the court to answer the petition.~~

~~(b) The clerk shall serve the respondent with:~~

- ~~(1) the summons to appear; and~~
  - ~~(2) a copy of the petition;~~
- ~~in accordance with Rule 4.1 of the Rules of Trial Procedure.~~

(c) Before providing a respondent with a copy of the petition, the clerk shall separate the uniform statewide confidential form completed by the petitioner or the person on whose behalf the petition is filed from the petition.

(d) The division of state court administration shall prescribe a single uniform confidential form to be used in all courts under this chapter.

Sec. 12. A court shall set a date for a hearing concerning a petition described in section 2 of this chapter not more than thirty (30) days after the date the petition is filed with the court. At the hearing, if at least one (1) of the allegations described in the petition is proved by a preponderance of the evidence, the court:

(1) shall order the respondent:

(A) to refrain from abusing, harassing, or disturbing the peace of the petitioner, by either direct or indirect contact;

(B) to refrain from abusing, harassing, or disturbing the peace of a member of the petitioner's household, by either direct or indirect contact;

(C) to refrain from entering the property of the petitioner, jointly owned or leased property of the petitioner and respondent if the respondent is not the sole owner or lessee, or any other property as specifically described in the petition;

(D) to refrain from damaging any property of the petitioner; and

(E) if the petitioner and respondent are married and if a proceeding for dissolution of marriage or legal separation is not pending:

(i) to be evicted from the dwelling of the petitioner if the respondent is not the sole owner or lessee of the petitioner's dwelling;

(ii) to not transfer, encumber, damage, conceal, or otherwise dispose of property jointly owned with the petitioner or that is an asset of the marriage;

(iii) to pay child support to the custodian of any minor children of the parties alone or with the other party;

(iv) to pay maintenance to the other party; or

(v) to perform a combination of the acts described in items (i) through (iv); and

(2) may order the respondent to refrain from possessing a firearm (as defined in IC 35-47-1-5) during a period not longer than the period that the respondent is under the protective order if the court finds by clear and convincing evidence that the respondent poses a significant threat of inflicting serious bodily injury to the petitioner or a member of the petitioner's household or family.

(3) may order counseling or other social services, including domestic violence education, for the petitioner, the respondent, or both, and may order the respondent to pay the costs of obtaining counseling or other social services for the petitioner, the respondent, or both.

If the court prohibits the respondent from possessing a firearm under subdivision (2), the court shall notify the state police department of the restriction. The court may also order the confiscation under IC 35-47-3 of any firearms that the court finds the respondent to possess during the period that the protective order is in effect.

~~Sec.13. Any part of a court order authorized under section 12(1)(E) or 12(2) of this chapter (or IC 34-4-5.1-5(a)(1)(E) or IC 34-4-5.1-5(a)(2) before their repeal) is issued without prejudice to the rights of the parties or a child concerning any issues that may be decided in proceedings for dissolution of marriage or legal separation. An order authorized under section 12 of this chapter (or IC 34-4-5.1-5 before its repeal) expires:~~

~~(1) when:~~

~~(A) a petition for dissolution or legal separation (with respect to the petitioner's and the respondent's marriage) has been filed; and~~

~~(B) a temporary restraining order issued under IC 31-15-4 (or IC 31-1-11.5-7 before its repeal) is in effect while the proceeding for marriage dissolution or legal separation is pending; or~~

~~(2) not more than one (1) year after the order is issued;  
whichever occurs first.~~

~~Sec.14. If a protective order expires under section 13(2) of this chapter, the court may, at the request of a party or upon the court's own motion, extend the protective order for an additional period of not more than one (1) year.~~

~~Sec.15. The small claims court judges in a county containing a consolidated city may by mutual agreement assign to one (1) or more divisions of the court exclusive jurisdiction over proceedings initiated under this chapter (or IC 34-4-5.1 before its repeal) in the small claims court.~~

~~Sec.16. When a court issues a protective order under section 12(1)(A), 12(1)(B), or 12(1)(C) of this chapter or an emergency protective order under section 5 of this chapter:~~

~~(1) the clerk of the court shall comply with IC 5-2-9; and~~

~~(2) the petitioner shall file a completed copy of the uniform statewide confidential form prescribed by the division of state court administration with the clerk.~~

~~Sec.17. (a) When a court issues a protective order under this chapter (or IC 34-4-5.1 before its repeal), the court may order the respondent to pay a reasonable amount for the cost to the moving party of maintaining a proceeding under this chapter (or IC 34-4-5.1 before its repeal) and for attorney's fees, including sums for legal services rendered before the commencement of the proceedings or after entry of judgment.~~

~~—— (b) The court may order the amount to be paid directly to the attorney, who may enforce the order in the attorney's name.~~

~~Sec.18. If a respondent is ordered to stay away from a petitioner, an invitation by a petitioner to a petitioner's residence or other place where a petitioner is located, does not waive or nullify any relief provided by the court in the order of protection.~~

## **COMMENTARY**

The Committee recommends this section be repealed. The family and domestic violence portions of IC 34-26-2 are covered in IC 34-26-5.

### **IC 34-26-2.5 (the entire chapter) (REPEALED).**

#### **Enforcement of Foreign Protection Orders.**

~~Sec.1. This chapter applies to a foreign protection order issued by a tribunal of the following:~~

~~(1) Another state.~~

~~(2) An Indian tribe.~~

~~Sec.2. A valid foreign protection order shall be accorded full faith and credit by the courts in Indiana. A court in Indiana may not enforce a foreign protection order issued by a tribunal of an issuing state or Indian tribe if the issuing state or Indian tribe does not recognize the standing of a protected individual to seek enforcement of the order.~~

~~Sec.3. A person authorized by Indiana to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a circuit, superior, or probate court in Indiana.~~

~~Sec.4. A circuit, superior, or probate court shall enforce the protection order provisions of an order issued by a tribunal, regardless of whether the order was obtained in an independent proceeding or as part of another proceeding. In a proceeding to enforce a foreign protection order, the circuit, superior, or probate court shall follow Indiana procedures for the enforcement of protection orders.~~

~~Sec.5. A foreign protection order is valid if it:~~

- ~~(1) identifies the protected individual and the respondent;~~
- ~~(2) is currently in effect;~~
- ~~(3) was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state or Indian tribe; and~~
- ~~(4) either:~~
  - ~~(A) was issued after the respondent was given reasonable notice and had an opportunity to be heard within a reasonable time before the tribunal issued the order; or~~
  - ~~(B) was issued in the case of an order ex parte, and the respondent was given notice and had an opportunity to be heard within a reasonable time after the order was issued, consistent with the rights of the respondent to due process.~~

~~Sec.6. A foreign protection order valid on its face is prima facie evidence of its validity.~~

~~Sec.7. The absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order or charging a person with a crime for violation of the foreign protection order.~~

~~Sec.8. A circuit, superior, or probate court in Indiana may enforce mutual foreign protection order provisions of an order of an issuing state or Indian tribe that favor a respondent only if:~~

- ~~(1) the respondent files a written pleading seeking a protection order from the tribunal of the issuing state or Indian tribe; and~~
- ~~(2) the tribunal of the issuing state or Indian tribe makes specific findings in favor of the respondent.~~

~~Sec.9. If IC 33-19-4.5 applies to the protected individual, costs or fees may not be imposed against a protected individual in a proceeding commenced to enforce a foreign protection order.~~

~~Sec.10. (a) A law enforcement officer, upon determining that:~~

- ~~(1) there is probable cause to believe that a valid foreign protection order exists; and~~
- ~~(2) the order has been violated;~~

~~shall enforce the order as if it were the order of an Indiana court. The presentation of a foreign protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid protection order exists. For purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form.~~

~~Presentation of a certified copy of a protection order is not required for enforcement.~~

~~—— (b) If a foreign protection order is not presented, an Indiana law enforcement officer may consider other information in determining whether there is a probable cause to believe that a valid protection order exists, including information from the National Crime Information Center (NCIC) protection order file, Indiana data and communication system (IDACS) under IC 5-2-5, or a depository established under IC 5-2-9-5.~~

~~—— (c) If an Indiana law enforcement officer determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall:~~

- ~~(1) inform the respondent of the order;~~
- ~~(2) make a reasonable effort to serve the order upon the respondent; and~~
- ~~(3) allow the respondent a reasonable opportunity to comply with the order before enforcing the order.~~

~~(d) Registration or filing of a foreign protection order in Indiana or in the National Crime Information Center (NCIC) protection order file is not required for the enforcement of a valid foreign protection order. The commencement of an action under section 3 of this chapter is not required for the enforcement of a valid foreign protection order.~~

~~Sec.11. Any individual may register a valid foreign protection order in Indiana. To register a foreign protection order, an individual must present the information required under section 12 of this chapter to a county clerk in the judicial district where the protected person resides.~~

~~Sec.12. A county clerk shall accept a foreign protection order for registration upon presentation of the following:~~

- ~~(1) A certified copy of a foreign protection order.~~
- ~~(2) A completed uniform statewide form prescribed by the division of state court administration for the registration of foreign protection orders that includes a format for the protected individual to provide a statement under affirmation that, to the best of the protected individual's knowledge, the order is currently in effect.~~

~~Registration, including the preparation of necessary copies, shall be without fee or cost.~~

~~Sec.13. The county clerk may not notify the party against whom the order has been made that a foreign protection order has been registered.~~

~~Sec.14. If the foreign protection order appears to be valid on its face, the county clerk shall:~~

- ~~(1) comply with IC 5-2-9-6.3; and~~
- ~~(2) return to the petitioner a copy of the foreign protection order bearing proof of filing with the county clerk.~~

~~Sec.15. Upon receipt of a copy of a foreign protection order under section 14 of this chapter, a city or town law enforcement agency or sheriff shall comply with IC 5-2-5-12 and IC 5-2-9-6.3.~~

~~Sec.16. (a) If a foreign protection order filed with a county clerk under section 11 of this chapter is terminated or expires, the person who obtained the foreign protection order must:~~

- ~~(1) file a notice of termination on a form prescribed or approved by the division of state court administration; and~~
- ~~(2) file a copy of the order terminating the foreign protection order, if terminated by an order other than the foreign protection order;~~

~~(b) If a foreign protection order filed with a county clerk under section 11 of this chapter is extended or modified, the person who obtained the extension or modification must file:~~

- ~~(1) a notice of extension or modification on a form prescribed or approved by the division of state court administration; and~~

~~(2) a certified copy of the order extending or modifying the foreign protection order;~~  
~~with the county clerk in Indiana with whom the foreign protection order was filed.~~  
Sec.17. A county clerk shall:  
~~(1) accept a notice and order filed under section 16 of this chapter from a protected individual without charge; and~~  
~~(2) comply with IC 5-2-9-6.3.~~  
Sec.18. A county clerk shall provide a protected person with uniform statewide forms:  
~~(1) prescribed by the division of state court administration; and~~  
~~(2) required under section 12 or 16 of this chapter;~~  
~~without charge.~~  
Sec.19. A circuit, superior, or probate court in Indiana may not enforce under this chapter a provision of a foreign protection order with respect to support. A provision concerning support may be enforced under IC 31-18.  
Sec.20. A circuit, superior, or probate court in Indiana may not enforce under this chapter a provision of a foreign protection order with respect to custody. A provision concerning custody may be enforced under IC 31-17-3.  
Sec.21. The provisions of IC 34-13-3-3 apply to an act or omission by a governmental entity or public employee arising out of the:  
~~(1) registration or enforcement of a foreign protection order; or~~  
~~(2) detention or arrest of an alleged violator of a foreign protection order.~~  
Sec.22. A protected individual who pursues remedies under this chapter may pursue other legal or equitable remedies against the respondent.

### COMMENTARY

The Committee is recommending that this section be repealed, since this subject matter is covered in IC 34-26-5-14.



## APPENDIX 5

### NECESSARY AMENDMENTS TO TITLE 35 OF THE INDIANA CODE

#### IC 35-33-1-1 (AMENDED).

- (a) A law enforcement officer may arrest a person when the officer has:
- (1) a warrant commanding that the person be arrested;
  - (2) probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, a felony;
  - (3) probable cause to believe that the person has violated the provisions of IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-2(1), IC 9-26-1-2(2), IC 9-26-1-3, IC 9-26-1-4, or IC 9-30-5;
  - (4) probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer's presence;
  - (5) probable cause to believe the person has committed a battery resulting in bodily injury under IC 35-42-2-1 or domestic battery under IC 35-42-2-1.3. ~~The officer may use an affidavit executed by an individual alleged to have direct knowledge of the incident alleging the elements of the offense of battery to establish probable cause;~~
  - ~~(6) probable cause to believe that the person violated IC 35-46-1-15.1 (invasion of privacy);~~
  - ~~(7) probable cause to believe that the person has committed stalking (IC 35-45-10);~~
  - ~~(8)~~ **(6)** probable cause to believe that the person violated IC 35-47-2-1 (carrying a handgun without a license ) or IC 35-47-2-22 (counterfeit handgun license); or
  - ~~(9)~~ **(7)** probable cause to believe that the person is violating or has violated an order issued under IC 35-50-7.
- (b) A person who:
- (1) is employed full time as a federal enforcement officer;
  - (2) is empowered to effect an arrest with or without warrant for a violation of the United States Code; and
  - (3) is authorized to carry firearms in the performance of the person's duties;
- may act as an officer for the arrest of offenders against the laws of this state where the person reasonably believes that a felony has been or is about to be committed or attempted in the person's presence.
- (c) A law enforcement officer shall arrest a person when the officer has probable cause to believe the person violated IC 35-46-1-15.1 (invasion of privacy).**
- (d) (1) A law enforcement officer responding to the scene of an alleged crime involving domestic or family violence (as defined in IC 35-41-1-6.5), shall use all means within reason to prevent further violence, including, but not limited to:**
- (A) confiscating firearms, deadly weapons, and ammunition as described below;**
  - (B) transporting or obtaining transportation for the alleged victim and any child(ren) to a designated safe place to meet with a domestic violence counselor, local family member, or friend;**

- (C) assisting the alleged victim in removing toiletries, medication, and necessary clothing; and,
  - (D) giving the alleged victim immediate and written notice of the rights enumerated in IC 35-40.
- (2) A law enforcement officer may confiscate and remove any firearms, ammunition, and deadly weapons from the scene if:
  - (A) the law enforcement officer has probable cause to believe that an act of domestic or family violence has occurred; and
  - (B) the law enforcement officer has observed the firearm, ammunition, or deadly weapon on the scene during the response.
- (e) If a firearm, deadly weapon, or ammunition is removed from the scene under subsection (d) of this section, the law enforcement officer shall:
  - (1) provide the owner of the firearm, ammunition, or deadly weapon information on the process for retaking possession of the item(s); and
  - (2) provide for the safe storage of the firearm during the pendency of any proceeding related to the alleged act of domestic or family violence.
- (f) At the conclusion of a proceeding on the alleged act of domestic or family violence, the defendant/owner of the confiscated firearm, deadly weapon, or ammunition may seek, by written motion exactly describing each item, to retake possession of the item(s). The court in which the proceeding on the alleged act of domestic or family violence is heard shall conduct a hearing on the defendant/owner's request for return of the confiscated item(s). The court shall conduct the hearing within fifteen (15) days of the conclusion of the proceeding. The court shall provide written notice of the hearing to the alleged victim of domestic or family violence, the prosecuting attorney, and the law enforcement agency which has control of the firearm, ammunition, or deadly weapon. The scope of the hearing shall be limited to:
  - (1) establishing whether the defendant/owner is subject to any state or federal law or court order that precludes the person from owning or possessing a firearm, ammunition, or deadly weapon; and,
  - (2) whether the defendant/owner continues to represent a credible threat to either the safety of the alleged victim, or to the public in general.
- (g) If the court finds that the defendant/owner is not subject to any state or federal law or court order precluding the ownership or possession of firearms, ammunition, or deadly weapons, and if the court finds that no credible threat exists, the court shall issue a written order directing the law enforcement agency to return the requested property to the defendant/owner.
- (h) Law enforcement agencies shall not release firearms and ammunition and specified deadly weapons without a court order granting such release. The law enforcement agency may charge the defendant/owner a reasonable fee for the storage of any firearms, ammunition, and specified deadly weapons taken pursuant to either this statute or a court order. The fee shall not exceed the actual cost incurred by the law enforcement agency for the storage of the item(s).
- (i) No law enforcement agency shall be held liable for alleged damage or

**deterioration due to storage or transportation to any firearms, ammunition, or deadly weapons held by a law enforcement agency, so long as due care is used.**

**(j) Any act or omission of a law enforcement officer rendering emergency care or assistance to an alleged victim of domestic or family violence including, but not limited to, transportation, shall not impose civil liability on the law enforcement officer or the law enforcement officer's supervisors or employer if the care or assistance is rendered in good faith, unless the act or omission is a result of gross negligence or willful misconduct.**

## **COMMENTARY**

The Committee proposes three substantive changes to Indiana's arrest law, and one ministerial change. First, the Committee suggests the language allowing officers to require an affidavit before arresting for a Battery or Domestic Battery not committed in their presence be deleted. This language has been part of Indiana's probable cause/warrantless arrest statute since July 1, 1985, when that subsection was enacted. However, the Committee believes that, not only is the language superfluous, it also works as a deterrent to arrest. Many victim advocates in this field relate incidents in which a complainant is too frightened by the suspect to want to sign an affidavit causing the suspect's arrest—the abuser will most certainly see the victim as the reason for the arrest, thus subjecting the victim to further violence, harassment, threats, intimidation, and injury. The Committee also believes this language singles out victims of Battery and Domestic Battery for unequal treatment under law—surely a result not intended by the Legislature. In no other area of criminal jurisprudence does Indiana require a civilian, often the actual victim of the crime, to take special action as a prerequisite for an arrest. The probable cause/warrantless arrest for misdemeanor battery is no longer the radical new concept it was in 1985—Indiana's law enforcement officers have been working with it for sixteen years now—and Indiana's General Assembly has, through the years, expanded the list of misdemeanor crimes for which an officer may arrest based on probable cause, *without* the warrant requirement. The General Assembly should remove the affidavit language because it is not legally necessary, and because it acts as an impediment to arrest and the equal enforcement of laws and protection of citizens.

The ministerial change the Committee proposes is to eliminate the Stalking crime from the list of misdemeanors for which an officer may arrest based on probable cause. Stalking was originally a misdemeanor in Indiana, but it has been a felony since the late 1990's. Warrantless arrests for felonies are authorized by Subsection (a) (2).

The Committee proposes that Indiana have a mandatory warrantless arrest law for violations of court orders to protect individuals from domestic or family violence or contact—Invasion of Privacy. The drafters of the Model Code also recommend a law of this type. Research suggests that swift and certain sanctions best deter perpetrators. Further support for the mandate stems from the conclusion of experts in the field that victims may refrain from seeking justice system intervention if perpetrators violate orders with impunity (Family Violence Prevention Fund, 1991). The drafters of the Model Code explicitly rejected the option of merely authorizing warrantless arrest for violations of orders for protection in favor of mandatory arrest

for several reasons. Foremost, the perpetrator of domestic or family violence who is the subject of an order for protection has been notified clearly that the court and the community will not tolerate further violence, and will hold violators accountable. Arrest protects the integrity of judicial process. In addition, the deterrent and protective powers of civil orders of protection are reinforced by the mandate to arrest for a violation. Model Code on Domestic and Family Violence, NCJFCJ (1994).

The risk of life-imperiling danger posed by perpetrators also appears to be heightened at the time victims separate from batterers (Mahoney, 1992; Browne, 1987) and seek court assistance in achieving safety (Sonkin *et al.*, 1985), it is imperative for the justice system to use its full enforcement powers. Only the respondent is subject to arrest for any violation of an enumerated provision. As a matter of law and policy, persons not constrained by orders for protection may not be penalized for any departure from an order by which they are not bound. All violations of a court order subject a violator to contempt proceedings, and sanctions, but IC 35-46-1-15.1 (Invasion of Privacy) enumerates those violations of civil protective orders that are crimes. The mandate to arrest in IC 35-33-1-1 is limited to the crime of Invasion of Privacy. A suspect may not be arrested until a law enforcement officer has verified the existence of a facially valid order. Model Code on Domestic and Family Violence, NCJFCJ (1994).

Research in this area indicates that women who seek civil protection orders usually do so after they have actually *experienced* violence (as opposed to a mere threat of violence), meaning that many respondents are people who have already demonstrated that they can be abusive and violent. Researchers have concluded that the incident which led to the petitioner requesting court assistance in the form of a civil protective order “simply represented the point at which the woman decided to seek help and did not measure the general level of violence in the relationship”, and also that “[t]he duration of abuse in the relationship bore no relationship to the probability of abuse following a restraining order.” (Harrell *et al.*, 1993, p.58.) Most significantly for this section, researchers have also found that, “although men named in restraining orders continue their abuse, they are less likely to commit acts of serious violence when an arrest has been made. This lends support to aggressive arrest policies and their impact in reducing the level of violence, if not deterring abuse altogether.” (Harrell *et al.*, 1993, p.59.)

The majority of abusive partners have a criminal record—sixty-five percent (65%) of the respondents in one study had a prior criminal arrest history (Keilitz *et al.*, 1997, p. xi). “These charges consisted of a variety of offenses including violent crime (domestic violence, simple assault, other violence and weapons charges), drug and alcohol-related crimes (drug and DUI offenses), and other categories of crimes (property, traffic and miscellaneous offenses). Of the 129 respondents with any history of violent crime, 109 had prior arrests for violent crimes other than domestic violence. These findings are generally consistent with a study conducted in Quincy, Massachusetts, that found that ‘80 percent of abusers have prior criminal histories...and half have prior violence records’” (Keilitz *et al.*, 1997, p. xi, citing M. Schachere, “STOP Grants Training Conferences Highlight Successful Strategies,” *National Bulletin on Domestic Violence Prevention*, Vol. 1, December, 1995).

When measuring the effectiveness of civil protective orders in deterring future violence, Keilitz *et al.* found that, “...the participants whose abusers had a higher number of arrests tended

to report a greater number of problems with the protection order...the participants whose abusers had at least one arrest for a violent crime other than domestic violence were more likely to experience a greater number of problems with the protection order. The second relationship between respondents' criminal record[s] and problems related to protection orders is stronger than the first. These findings indicate that protection orders obtained against respondents with a criminal history are less likely to be effective in deterring future violence or avoiding other problems than those obtained against respondents without such a history. Because protection orders provide petitioners with less protection against respondents with a high number of arrests, and more specifically with a history of violent crime, ***the need for aggressive criminal prosecution policies becomes more critical***. Criminal prosecution of such individuals may be required to curb their abusive behavior. Reliance on a protection [order] as the sole intervention in these cases may not be the most effective deterrence against further abuse (Keilitz, *et al.*, 1997, p.43, emphasis added).

Finally, the Committee is recommending that the Indiana General Assembly clearly and fully empower law enforcement officers to confiscate firearms, deadly weapons, and ammunition from the scene of alleged incidents of domestic or family violence when probable cause exists. The extent of lethal family violence involving firearms is well-documented. For example, in 1996, 65% of all "intimate murders" were committed with a firearm. Greenfeld, Lawrence A. *et al.*, *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends*. (NCJ-167237, March, 1998). And, "[a]ccording to the FBI's Supplemental Homicide Reports in 1992, 62% of the murder victims known to have been killed by intimates were shot to death...Firearms were most frequently used to kill—wives and ex-wives (69%); husbands and ex-husbands (61%); girlfriends (60%). Boyfriends were more often killed with knives (54%) than firearms (41%)...For all types of victims killed by firearms, most are killed by handguns. Over three-quarters of the firearms used to kill intimates were handguns. Wives and girlfriends were more likely than other types of victims to have been killed by shotguns." U.S. Department of Justice, Bureau of Justice Statistics: *Violence between Intimates*. (NCJ-149259, November, 1994).

The proposed language is a hybrid of two states' statutory schemes, those of New Hampshire and Maryland; however, many states currently empower their law enforcement officers to confiscate firearms for safekeeping. The relevant Maryland statute can be found in the Maryland Code, Family Law Article, §4-511. The New Hampshire statutes are: N.H. Rev. Stat. Title XII, §§173-B:5, 10, and 12.

### **IC 35-33-8-9 (NEW).**

**A person arrested for a crime involving domestic or family violence as defined in IC 35-41-1-6.5 may be held for up to 48 hours before the court holds a hearing on bail.**

### **COMMENTARY**

This language recognizes existing practice in some counties. Courts have held that while defendants have a right to bail, they do not have a right to an immediate bail hearing. It also provides for a "cooling off" period and facilitates compliance with victim's rights laws.

**IC 35-38-1-7.1 (AMENDED).**

- (a) In determining what sentence to impose for a crime, the court shall consider:
- (1) the risk that the person will commit another crime;
  - (2) the nature and circumstances of the crime committed;
  - (3) the person's:
    - (A) prior criminal record;
    - (B) character; and
    - (C) condition;
  - (4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;
  - (5) whether the person committed the offense in the presence or within hearing of a person who is less than eighteen (18) years of age who was not the victim of the offense;
  - (6) whether the person violated a protective order issued against the person under: **(A)** IC 31-15, or IC 31-16, ~~(or IC 31-1-11.5 before its repeal);~~ or, **(B)** IC 34-26-2 ~~(or IC 34-4-5.1 before its repeal);~~ **and-or,** **(C)** **IC 34-26-5; and,**
  - (7) any oral or written statement made by a victim of the crime.
- (b) The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:
- (1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.
  - (2) The person has a history of criminal or delinquent activity.
  - (3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment to a penal facility.
  - (4) Imposition of a reduced sentence or suspension of the sentence and the imposition of probation would depreciate the seriousness of the crime.
  - (5) The victim of the crimes was less than twelve (12) years of age or at least sixty-five (65) years of age.
  - (6) The victim of the crime was mentally or physically infirm.
  - (7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.
  - (8) The person committed a sex crime listed in subsection (e) and:
    - (A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;
    - (B) the person had knowledge that the person was a carrier of HIV; and
    - (C) the person had received risk counseling as described in subsection (g).
  - (9) The person committed an offense related to controlled substances listed in subsection (f) if:
    - (A) the offense involved:
      - (i) the delivery by any person to another person; or
      - (ii) the use by any person on another person;

- of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact;
- (B) the person had knowledge that the person was a carrier of the human immunodeficiency virus (HIV); and
- (C) the person had received risk counseling as described in subsection (g).
- (10) The person committed an offense in an area of a consolidated or second class city that is designated as a public safety improvement area by the Indiana criminal justice institute under IC 36-8-19.5.
- (11) The injury to or death of the victim of the crime was the result of shaken baby syndrome (as defined in IC 16-41-40-2).
- (12) Before commission of the crime, the person administered to the victim of the crime, without the victim's knowledge, a sedating drug or a drug that had a hypnotic effect on the victim, or the person had knowledge that such a drug had been administered to the victim without the victim's knowledge.
- (13) The person:
  - (A) committed trafficking with an inmate under IC 35-44-3-9; and
  - (B) is an employee of the penal facility.
- (14) The person committed the offense in the presence or within hearing of a person who is less than eighteen (18) years of age who was not the victim of the offense.
- (c) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:
  - (1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.
  - (2) The crime was the result of circumstances unlikely to recur.
  - (3) The victim of the crime induced or facilitated the offense.
  - (4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.
  - (5) The person acted under strong provocation.
  - (6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.
  - (7) The person is likely to respond affirmatively to probation or short term imprisonment.
  - (8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.
  - (9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.
  - (10) Imprisonment of the person will result in undue hardship to the person or to the dependents of the person.
  - (11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.
- (d) The criteria listed in subsections (b) and (c) do not limit the matters that the court may consider in determining the sentence.
- (e) For the purposes of this article, the following crimes are considered sex crimes:

- (1) Rape (IC 35-42-4-1).
  - (2) Criminal deviate conduct (IC 35-42-4-2).
  - (3) Child molesting (IC 35-42-4-3).
  - (4) Child seduction (IC 35-42-4-7).
  - (5) Prostitution (IC 35-45-4-2).
  - (6) Patronizing a prostitute (IC 35-45-4-3).
  - (7) Incest (IC 35-46-1-3).
  - (8) Sexual misconduct with a minor under IC 35-42-4-9(a).
- (f) For the purposes of this article, the following crimes are considered offenses related to controlled substances:
- (1) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).
  - (2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
  - (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
  - (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
  - (5) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).
  - (6) Possession of a controlled substance (IC 35-48-4-7).
  - (7) Dealing in paraphernalia (IC 35-48-4-8.5).
  - (8) Possession of paraphernalia (IC 35-48-4-8.3).
  - (9) Offenses relating to registration (IC 35-48-4-14).
- (g) For the purposes of this section, a person received risk counseling if the person had been:
- (1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and
  - (2) warned of the behavior that can transmit HIV.

## COMMENTARY

The Committee incorporates the proposed changes to the civil protective order statute into the sentencing statute.

### **IC 35-41-1-6.5 (NEW) “Crime involving domestic or family violence.”**

**A “crime involving domestic or family violence” occurs when a family or household member commits, attempts to commit, and/or conspires to commit one or more of the following crimes against another family or household member:**

- (1) Homicide Offenses as defined in Article 42, Chapter 1;**
- (2) Battery and Related Offenses as defined in Article 42, Chapter 2;**
- (3) Kidnapping—Confinement as defined in Article 42, Chapter 3;**
- (4) Sex Crimes as defined in Article 42, Chapter 4;**
- (5) Robbery as defined in Article 42, Chapter 5;**
- (6) Arson—Mischief as defined in Article 43, Chapter 1;**
- (7) Burglary—Trespass as defined in Article 43, Chapter 2;**
- (8) Disorderly Conduct as defined in Article 45, Chapter 1;**
- (9) Intimidation and Harassment as defined in Article 45, Chapter 2;**



- (10) Voyeurism as defined in Article 45, Chapter 4;**
- (11) Stalking as defined in Article 45, Chapter 10; and,**
- (12) Offenses Against the Family as defined in Article 46, Chapter 1, Sections 2 through 8, 12, and 15.1.**

### **COMMENTARY**

This section enumerates the range of criminal conduct employed by many perpetrators of domestic or family violence. The Committee offers this detailed list to underscore the breadth of violent crimes and fear-inducing or harmful conduct undertaken by perpetrators of domestic or family violence. Model Code on Domestic and Family Violence, NCJFCJ (1994).

#### **IC 35-41-1-10.6 (NEW). “Family or household member.”**

**“Family or household member” includes:**

- (1) adults or minors who are current or former spouses;**
- (2) adults or minors who are dating or who have dated;**
- (3) adults or minors who are engaged in or who have engaged in a sexual relationship;**
- (4) adults or minors who are related by blood or adoption;**
- (5) adults or minors who are related or formerly related by marriage;**
- (6) persons, whether adults or children, with current or former legally established relationships, in the positions of guardians or wards, custodians, or foster parents, or similar relationships;**
- (7) persons who have a child in common; and,**
- (8) minor children of a person in a relationship that is described in paragraphs (1) through (7).**

### **COMMENTARY**

It is important to maintain consistent terminology and definitions throughout the Indiana Code. Logically, the definition of family violence should not differ from that found in Title 31 (family and juvenile law) to Title 34 (civil law) to Title 35 (criminal law). Therefore, the Committee is adding the definition of “family or household member” to the “Definitions” section of IC 35-41, and modifying the crime of domestic battery to provide internal consistency with Titles 31 and 34.

#### **IC 35-42-2-1.3. Domestic battery (AMENDED).**

A person who knowingly or intentionally touches a person who:

- (1) is or was a spouse of the other person;**
- (2) is or was living as if a spouse of the other person; or**
- (3) has a child in common with the other person;**

in a rude, insolent, or angry manner ~~that results in bodily injury to the person described in subdivision (1), (2), or (3)~~ commits domestic battery, a Class ~~A~~ **B** misdemeanor.

However, the offense is:

**(a) a Class A misdemeanor if it results in bodily injury to the person described in subdivision (1), (2), or (3);**

**(b) a Class D felony if it results in bodily injury to the other person, and if the person who commits the domestic battery has a previous, unrelated conviction under this section or a conviction under a substantially similar statute in another jurisdiction (or IC 35-42-2-1 (a)(2)(E) before its repeal, or this section before its amendment).**

## COMMENTARY

The severity levels of the crime of domestic battery should be parallel to those of battery—thus, the Committee is proposing the creation of the new crime of domestic battery, a Class B misdemeanor, for those instances when a person batters an intimate partner (as defined by federal law, for purposes of the Gun Control Act, in 18 U.S.C. § 921 (a) (32)—a different definition of “intimate partner” from that found in the full faith and credit section of the United States Code) but does not injure the victim. This is an important distinction because, since 1996, one who has been convicted of a misdemeanor crime of domestic violence has been disqualified from possessing a firearm or ammunition under the Lautenberg Amendment to the federal Gun Control Act of 1968, found at 18 U.S.C. § 922 (g) (9) (“[i]t shall be unlawful for any person...who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”)

A “misdemeanor crime of domestic violence” is defined in relevant part as, “...an offense that—**(i)** is a misdemeanor under Federal or State law; and **(ii)** has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon [such as Pointing a Firearm, a class A misdemeanor in Indiana if the firearm in question is not loaded], committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.” 18 U.S.C. § 921 (a) (33) (A). Obviously, the federal definition does not require bodily injury to the victim as an element of the misdemeanor in question.

### IC 35-45-10-5 (AMENDED).

(a) A person who stalks another person commits stalking, a Class D felony.

(b) The offense is a Class C felony if at least one (1) of the following applies:

(1) A person:

(A) stalks a victim; and

(B) makes an explicit or an implicit threat with the intent to place the victim in reasonable fear of:

- (I) sexual battery (as defined in IC 35-42-4-8);
  - (II) serious bodily injury; or
  - (III) death.
- (2) A protective order **to prevent domestic or family violence, or a no-contact order**, or other judicial order under any of the following statutes has been issued by the court to protect the same victim or victims from the person and the person has been given actual notice of the order:
  - (A) IC 31-15/**IC 34-26-5**, ~~IC 31-16~~, IC 31-17/**IC 34-26-5**, or IC 31-1-11.5 **and IC 31-16** before ~~its~~ **their** repeal (dissolution of marriage, legal separation, child support, and child custody).
  - (B) IC 31-34, IC 31-37, or IC 31-6-4 before its repeal (delinquent children and children in need of services).
  - (C) IC 31-32 or IC 31-6-7 before its repeal (procedure in juvenile court).
  - (D) **IC 34-26-5** or IC 34-26-2 or IC 34-4-5.1 before ~~its~~ **their** repeal (protective order to prevent abuse).
  - (E) **IC 34-26-6 (workplace violence restraining orders)**.
- (3) The person's stalking of another person violates ~~an~~ **no-contact** order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion ~~that orders the person to refrain from any direct or indirect contact with another person~~ if the person has been given actual notice of the order.
- (4) The person's stalking of another person violates ~~an~~ **no-contact** order issued as a condition of probation ~~that orders the person to refrain from any direct or indirect contact with another person~~ if the person has been given actual notice of the order.
- (5) The person's stalking of another person violates a protective order issued under IC 31-14-16/**IC 34-26-5** in a paternity action, if the person has been given actual notice of the order.
- (6) The person's stalking of another person violates an order issued in another state that is substantially similar to an order described in subdivisions (2) through (5) if the person has been given actual notice of the order.
- (7) The person's stalking of another person violates an order that is substantially similar to an order described in subdivisions (2) through (5) and is issued by an Indian:
  - (A) tribe;
  - (B) band;
  - (C) pueblo;
  - (D) nation; or
  - (E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians if the persons had been given actual notice of the order.
- (8) A criminal complaint of stalking that concerns an act by the person against the same victim or victims is pending in a court and the person has been given actual notice of the complaint.
- (c) The offense is a Class B felony if:
  - (1) the act or acts were committed while the person was armed with a deadly weapon; or

- (2) the person has an unrelated conviction for an offense under this section against the same victim or victims.
- (d) Notwithstanding subsection (a), the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly if the court finds mitigating circumstances. The court may consider the mitigating circumstances in IC 35-38-1-7.1 (C) in making a determination under this subsection. However, the criteria listed in IC 35-38-1-7.1 (C) do not limit the matters the court may consider in making its determination.
- (e) Notwithstanding subsection (b), the court may enter judgment of conviction of a Class D felony and sentence accordingly if the court finds mitigating circumstances. The court may consider the mitigating circumstances in IC 35-38-1-7.1 (C) in making a determination under this subsection. However, the criteria listed in IC 35-38-1-7.1 (C) do not limit the matters the court may consider in making its decision.

## COMMENTARY

The Committee incorporates the proposed changes in the civil protective order statute, and changes to the names used for orders, into the Class C felony stalking enhancement.

### IC 35-46-1-15.1 (AMENDED).

- (a) A person who knowingly or intentionally violates:
  - (1) a protective order issued under: **IC 34-26-5 (or (A) IC 34-26-2-12(1)(A)-1 et seq., or IC 34-4-5.1-(5)(a)(1)(A)-1 et seq. before its repeal, if the order involved a family or household member); (B) IC 34-26-2-12(1)(B) (or IC 34-4-5.1-5(a)(1)(B) before its repeal); or (C) IC 34-26-2-12(1)(C) (or IC 34-4-5.1-5(a)(1)(C) before its repeal) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;**
  - (2) an emergency *ex parte* protective order issued under: **IC 34-26-5 (or an emergency order issued under IC 34-26-2-6(1), IC 34-26-2-6(2), or IC 34-26-2-6(3)1 et seq., or IC 34-4-5.1-2.3(a)(1)(A), IC 34-4-5.1-2.3(a)(1)(B), or IC 34-4-5.1-2.3(a)(1)(C)-1 et seq. before its repeal, if the order involved a family or household member) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;**
  - (3) ~~a temporary restraining order issued under: IC 31-15-4-3(2), IC 31-15-4-3(3)/(or, IC 31-1-11.5-7(b)(2) or IC 31-1-11.5-7(b)(3) before their repeal; or, IC 31-16-42(a)(2) or IC 31-16-42(a)(3) before their repeal)~~ **that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner; a workplace violence restraining order issued pursuant to IC 34-26-6;**
  - (4) ~~an no-contact order in a dispositional decree issued under: IC 31-34-20-1, IC 31-37-19-1 or IC 31-37-19-5 -6; (or, IC 31-6-4-15.4 or IC 31-6-4-15.9 -15.9 before their repeal) ; or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal )-that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child ;~~

- (5) an **no-contact** order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion ~~that orders the person to refrain from any direct or indirect contact with another person;~~
- (6) an **no-contact** order issued as a condition of probation ~~that orders the person to refrain from any direct or indirect contact with another person;~~
- (7) a protective order **to prevent domestic or family violence** issued under IC 31-15-5/**IC 34-26-5**, (or IC 31-16-5 or IC 31-1-11.5-8-2 before their repeal) ~~that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;~~
- (8) a protective order issued under IC 31-14-16/**IC 34-26-5** in a paternity action;
- (9) a **no-contact** order issued under IC 31-34-17 in a child in need of services proceeding or under IC 31-37-16 in a juvenile delinquency proceeding, ~~that orders the respondent to refrain from having direct or indirect contact with a child;~~
- (10) an order issued in another state that is substantially similar to an order described in subdivisions (1) through (9); or,
- (11) an order that is substantially similar to an order described in subdivisions (1) through (9) and is issued by an Indian:
  - (A) tribe;
  - (B) band;
  - (C) pueblo;
  - (D) nation; or
  - (E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians; commits invasion of privacy, a Class ~~B~~ **A** misdemeanor. However, the offense is a Class ~~A~~ **D** ~~misdemeanor~~ **felony** if the person has a prior unrelated conviction for an offense under this section.

(b) In addition to any other penalty imposed for conviction of a Class ~~A~~ **D** ~~misdemeanor~~ **felony** under this section, if the violation of the protective order results in bodily injury to the petitioner, the court shall order the defendant to be imprisoned for five (5) days. A five (5) day sentence under this subsection may not be suspended. The court may require the defendant to serve the five (5) day term of imprisonment in an appropriate facility at whatever time or intervals, consecutive or intermittent, the court determines to be appropriate. However:

- (1) at least forty-eight (48) hours of the sentence must be served consecutively; and
- (2) the entire five (5) day sentence must be served within six (6) months after the date of sentencing.

(c) Notwithstanding IC 35-50-6, a person does not earn credit time while serving a five (5) day sentence under subsection (b).

## COMMENTARY

The Committee incorporates the proposed changes to the civil protective order statute into the crime of invasion of privacy. The goal of the Committee is to ultimately simplify the enforcement of civil protective orders, by consolidating the civil orders to prevent domestic or family violence into one statute (IC 34-26-5), available for paternity cases, dissolution cases,

legal separation cases, and “original”, domestic civil protective order cases. Also, the amendments clarify the nomenclature; in other words, Indiana will have “protective orders” and “no-contact orders”—issued in criminal cases, C.H.I.N.S. matters, delinquency cases, and other juvenile proceedings.

The members of the Committee also believe that a crime involving the violation of a court order (Invasion of Privacy) is, by its nature, so serious as to warrant being a Class A misdemeanor, with a recidivist enhancement to a Class D felony.

#### **IC 35-46-1-20 (AMENDED).**

A law enforcement officer shall enforce a foreign protection order (as defined in IC 34-6-2-48.5) in conformity with the procedures in IC 34-26-~~2-5-10~~ **-5-14**.

#### **35-47-4-6 (NEW). Possession of firearm or ammunition by domestic violence offender.**

- (a) As used in this section, “domestic violence offender” means a person who has been convicted of a crime involving domestic or family violence as defined in IC 35-41-1-6.5, or a person who is a respondent subject to a protection order issued under IC 34-26-5.**
- (b) A domestic violence offender who knowingly possesses a firearm or ammunition commits a Class D felony.**

#### **COMMENTARY**

The Committee is recommending the Indiana legislature pass a state law comparable to the federal law, just as it did when enacting IC 35-47-4-5 as a Class D felony, the crime of “possession of a firearm by a serious violent felon”. The federal government cannot, and does not, prosecute every violation of 18 U.S.C. § 922 (d). That is why Indiana created the crime relating to violent felons in possession of firearms. The same rationale applies to the domestic violence disqualifiers under 18 U.S.C. §§ 922 (d) (8) and (9). A person who is a domestic violence offender under this section has already demonstrated a propensity to victimize others—family members, children, intimate partners. That person should not be in possession of a firearm or ammunition, a fact recognized by Congress. Indiana should give local prosecutors and law enforcement officers another tool to help ensure the safety of victims of family violence.

## APPENDIX 6

### PROPOSED CHANGE TO TRIAL RULE 65(E)

#### Rule 65. Injunctions

##### (E) Temporary Restraining Orders—Domestic Relations Cases.

**Parties wishing protection from domestic or family violence in Domestic Relations cases shall petition the court pursuant to IC 34-26-5.** Subject to the provisions set forth in this paragraph, in an action for dissolution of marriage, separation, or child support, the court may issue a Temporary Restraining Order, without hearing or security, if either party files a verified petition alleging an injury would result to the moving party if no immediate order were issued.

- (1) *Joint Order.* If the court finds that an order shall be entered under this paragraph, the court may enjoin both parties from:
  - (a) transferring, encumbering, concealing, selling or otherwise disposing of any joint property of the parties or asset of the marriage except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court; and/or
  - (b) removing any child of the parties then residing in the State of Indiana from the State with the intent to deprive the court of jurisdiction over such child without the prior written consent of all parties or the permission of the court.
- (2) *Separate Order Required.* In the event a party seeks to enjoin **by a temporary restraining order** the non-moving party from abusing, harassing, **or** disturbing the peace ~~of, or committing a battery on~~ the petitioning party or any child or step-child of the parties, or exclude the non-moving party from the family dwelling, the dwelling of the non-moving party, or any other place, and the court determines that an order shall be issued, such order shall be addressed to one person. A joint or mutual restraining ~~or protective~~ order shall not be issued. If both parties allege injury, they shall do so by separate petitions. The trial court shall review each petition separately and grant or deny each petition on its individual merits. In the event the trial court finds cause to grant both petitions, it shall do so by separate orders.
- (3) *Effect of Order.* An order entered under this paragraph is automatically effective upon service. Such orders are enforceable by all remedies provided by law including contempt. Once issued, such orders remain in effect until the entry of a decree or final order or until modified or dissolved by the court.

## COMMENTARY

Trial Rule 65(E) provides courts an opportunity to address certain problems and incivility in connection with Domestic Relations cases; however, a Temporary Restraining Order (TRO) should not be used instead of a Civil Protective Order to prevent domestic or family violence issued under IC 34-26-5. A TRO may be enforced by civil contempt within the Domestic Relations case and violations will not be a basis for criminal prosecution as Invasion of Privacy under IC 35-46-1-15.1. If the facts and circumstances of a Domestic Relations case involve issues of family and domestic violence, a petition for a Civil Protective Order under IC 34-26-5 should be utilized. If TRO's concerning other domestic relations issues are ordered, they are to be ordered separately, in addition to the Civil Protective Order. Only the Civil Protective Order will be enforced by a criminal proceeding and be supported by federal gun laws, the Violence Against Women Acts, and federal full faith and credit laws. Unlike Civil Protective Orders, TRO's will not be placed in a State Registry, IDACS, or NCIC.

## APPENDIX 7

### WORKPLACE VIOLENCE RESTRAINING ORDER ACT

#### **34-26-6-1. Workplace Violence Restraining Orders.**

**(a) Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee prohibiting further unlawful violence or threats of violence by that individual.**

**(b) For the purposes of this section:**

**(1) "Unlawful violence" is any Battery or Stalking as prohibited in IC 35-42-2 and IC 35-45-10, but shall not include lawful acts of self-defense or defense of others.**

**(2) "Credible threat of violence" is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.**

**(3) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an**



**employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, fax, or computer e-mail.**

**(c) Nothing in this section shall be construed to permit a court to issue a temporary restraining order or injunction prohibiting speech or other activities that are constitutionally protected, or otherwise protected by any other provision of law.**

**(d) For purposes of this section, the terms "employer" and "employee" mean persons defined in IC 22-2-2-3. The term "employer" also includes a federal agency, the state, a state agency, a city, or a county, and a private, public, or quasi-public corporation, or any public agency thereof or therein. The term "employee" also includes the members of boards of directors of private, public, and quasi-public corporations and elected and appointed public officers. For purposes of this section only, the term "employee" also includes a volunteer or independent contractor who performs services for the employer at the employer's worksite.**

**(e) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with subsection (a), if the plaintiff also files an affidavit that, to the satisfaction of the court, shows reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the defendant, and that great or irreparable harm would result to an employee. In the discretion of the court, and on a showing of good cause, a temporary restraining order issued under this section may include other named family or household members who reside with the employee. A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, unless otherwise modified or terminated by the court.**

**(f) Within 15 days of the filing of the petition, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the defendant is a current employee of the entity requesting the injunction, the judge shall receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the defendant. If the judge finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.**

**(g) Nothing in this section shall preclude either party from representation by private counsel or from appearing on his or her own behalf.**

**(h) Upon filing of a petition for an injunction under this section, the defendant shall**

be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may, for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(i) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported unlawful violence or a credible threat of violence.

(j) Any intentional disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to IC 35-46-1-15.1, Invasion of Privacy.

(k) Nothing in this section shall be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons.

(l) The Division of State Court Administration shall develop forms, instructions, and rules for scheduling of hearings and other procedures established pursuant to this section. The forms for the petition and response shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(m) A temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be issued on forms adopted and approved by the Division of State Court Administration and consistent with IC 34-26-5-3. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted and approved by the Division of State Court Administration shall not, in and of itself, make the order unenforceable.

(n) Information on any temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be transmitted to the Indiana Data and Communication System (IDACS) in accordance with IC 34-26-5-15, IC 5-2-5, and IC 5-2-9.

(o) There shall be no filing fee for a petition that alleges that a person has inflicted or threatened violence against an employee of the petitioner, or stalked the employee, or acted or spoke in any other manner that has placed the employee in reasonable fear of violence, and that seeks protective or restraining orders or injunctions restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for filing a response to a petition alleging these acts.

## COMMENTARY

This proposed legislation creates a remedy for situations involving actual or threatened workplace violence. The Act is adapted from a California statute, 527.8.

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